

TWENTY-FIFTH DAY.

Senate Chamber,
Austin, Texas,
February 17, 1933.

The Senate met at 9:30 o'clock a. m., pursuant to adjournment, and was called to order by President Pro Tem. Walter Woodul.

The roll was called, a quorum being present, the following Senators answering to their names:

Beck.	Parr.
Collie.	Patton.
Cousins.	Poage.
Duggan.	Purl.
Fellbaum.	Rawlings.
Greer.	Redditt.
Holbrook.	Regan.
Hopkins.	Russek.
Hornsby.	Sanderford.
Martin.	Small.
Moore.	Stone.
Murphy.	Woodruff.
Neal.	Woodul.
Oneal.	Woodward.
Pace.	

Absent—Excused.

Blackert. DeBerry.

Prayer by the Chaplain.

Pending the reading of the Journal of yesterday, the same was dispensed with on motion of Senator Woodward.

Petitions and Memorials.

(See Appendix.)

Committee Reports.

(See Appendix.)

Bills and Resolutions

By Senator Small:

S. J. R. No. 14, Proposing and submitting to the people of the State of Texas an amendment to Section 10 of Article 1 of the Constitution of Texas, authorizing the Legislature to enact a law providing for the prosecution of felonies by information as well as by indictment, and to modify the grand jury system.

Read and referred to Committee on Constitutional Amendments.

By Senator Moore:

S. B. No. 222, A bill to be entitled "An Act amending Article 1499 and repealing Articles 1500, 1501, 1502, and 1506, Chapter 15, Title 32, Re-

vised Civil Statutes of 1925 relating to the purposes for which private corporations may be formed; prohibiting a corporation, joint-stock association, and association of persons engaged in the production or refining of crude petroleum from owning stock or other interest in common carrier pipe lines or pipe line companies, and fixing a time for conforming to the provision of this Act, and declaring that the ownership of stock in common carrier pipe lines by corporations, joint-stock associations, and associations of persons engaged in the production or refining of crude petroleum oil tends to create a monopoly and is in conflict with the anti-trust laws of the State of Texas and declaring same to be unlawful, and declaring an emergency."

Read and referred to Committee on State Affairs.

By Senator Woodul:

S. B. No. 223, A bill to be entitled "An Act to amend Article 3812 of the Revised Civil Statutes of Texas, 1925, relating to notices of sales of personal property under execution or chattel mortgage liens, so as to provide for the publication of such notices in certain newspapers, providing for the repeal of all laws and parts of laws in conflict herewith, and declaring an emergency."

Read and referred to Committee on Civil Jurisprudence.

By Senator Woodul:

S. B. No. 224, A bill to be entitled "An Act to amend Article 3810 of the Revised Civil Statutes of Texas, 1925, relating to sales under deeds of trust and contract liens and notice thereof so as to provide for the publication of such notices in certain newspapers unless the trustee shall be requested by the owner of the real estate to be sold to give notice and sell such property as provided in such deed of trust or contract lien, fixing the compensation to the newspapers in making such publication and providing for posting where there is no newspaper published in the county or none which will publish for the compensation fixed, providing that sales under deeds of trust and contract liens already in existence may be made in the manner now provided by law, and to repeal all laws and parts of laws in conflict therewith, and declaring an emergency."

Read and referred to Committee on Civil Jurisprudence.

By Senator Martin:

S. B. No. 225, A bill to be entitled "An Act amending Sub-section 8, Chapter 40, General and Special Laws, 42nd Legislature, Second Called Session, being an Act 'Providing for development of State-owned river beds for oil and gas purposes,' by re-appropriating for the purposes therein set out the unexpended balance of the specific appropriation contained in Sub-section 8 of said Act, and declaring an emergency."

Read and referred to Committee on Public Lands and Land Office.

By Senator Fellbaum:

S. B. No. 226, A bill to be entitled "An Act to amend Article 3135, Chapter 13, Title 50, of the Revised Civil Statutes of Texas, 1925, by providing for the time and place of the meeting of the district executive committee and district conventions of political parties; providing for the tabulation and canvassing of returns from county chairmen and the certifying of candidates receiving the highest number of votes to be placed on the ballot for the second primary held on the fourth Saturday of August, 1926, and each two years thereafter; providing for meeting of district executive committee to receive and tabulate list of delegates to district convention, to receive returns from second general primary; providing for district conventions to declare party nominations for district offices, and the certification of such nominees to the Secretary of State, and providing that county clerks shall also certify votes of their counties for district offices to the Secretary of State, and declaring an emergency."

Read and referred to Committee on Privileges and Elections.

By Senator Poage:

S. B. No. 227, A bill to be entitled "An Act requiring the clerks of various courts of civil appeals, of the Supreme Court and of the Court of Criminal Appeals to collect and account for all fees, providing that no fees shall be retained by such clerks, and that no such clerk shall receive or retain any funds in excess of the salary provided by law, providing for the distribution of fees collected, and defining the term clerk, and declaring an emergency."

Read and referred to Committee on Finance.

By Senator Poage:

S. B. No. 228, A bill to be entitled "An Act making it unlawful for persons bearing certain relations to other persons regularly employed by the State, or any of its political or governmental subdivisions or districts, to knowingly receive compensation from the State or from any such subdivisions or districts, and making it unlawful for any person to knowingly approve any account or authorize a drawing of any warrant or order to pay any such compensation to such persons, providing a penalty, and declaring an emergency."

Read and referred to Committee on State Affairs.

By Senator Poage:

S. B. No. 229, A bill to be entitled "An Act providing a special fund out of the revenue received by the Fish, Game and Oyster Commission for the propagation, purchase and distribution of wild game; and declaring an emergency."

Read and referred to Committee on State Affairs.

By Senator Neal:

S. B. No. 230, A bill to be entitled "An Act to extend the jurisdiction of the Board of Insurance Commissioners of the State of Texas so as to provide for the regulation and management of all mutual assessment life insurance companies and associations now operating in the State of Texas on a State-wide plan; prescribing penalties; and declaring an emergency."

Read and referred to Committee on Insurance.

By Senator Small:

S. B. No. 231, A bill to be entitled "An Act to amend Section 1-a, Chapter 140, General Laws of the 42nd Legislature, Regular Session; providing for the creation of new independent, common school and county line districts out of parts of other school districts; providing for adjustment of any bonded indebtedness and the assumption of said indebtedness; and declaring an emergency."

Read and referred to Committee on Educational Affairs.

By Senator Small:

S. B. No. 232, A bill to be entitled "An Act to amend Articles 612 and 613 of the Code of Criminal Procedure concerning the mode of testing jurors in criminal cases, and declaring an emergency."

Read and referred to Committee on Criminal Jurisprudence.

By Senator Purl:

S. B. No. 233, A bill to be entitled "An Act requiring the County Judge to include in the County Budget an itemized statement showing the number of deputies, assistants and employees recommended for each county and precinct officer; the proposed compensation they are to receive and all proposed expenditures for county and precinct officers; and, requiring all county and precinct officers to furnish information with reference thereto and fixing penalties for the violation hereof; and authorizing the Commissioners Court to fix the number and compensation of such deputies, assistants and employees, and determine all expenditures of county and precinct officers, such number, compensation and expenditures not to exceed any limitations now provided by law with reference thereto; authorizing the Commissioners Court to fix compensation of other officers; and declaring an emergency."

Read and referred to Committee on Criminal Jurisprudence.

Messages from the House.

Hall of the House of Representatives.

Austin, Texas, Feb. 17, 1933.

Hon. Edgar E. Witt, President of the Senate.

Sir: I am directed by the House to inform the Senate that the House has passed the following bills and resolutions:

H. B. No. 415, A bill to be entitled "An Act making an emergency appropriation out of the General Revenue of the State, for the purpose of conducting a poison bait spray campaign in the Lower Rio Grande Valley to control and eradicate and prevent the spread to other parts of the State of the Mexican fruit fly, and to meet the emergency appropriation for this campaign made by the United States Government contingent upon the State of Texas doing its share in the bait spray campaign, and to insure the continu-

ance of the interstate trade relations now enjoyed by Texas, and declaring an emergency."

H. C. R. No. 29, Authorizing the enrolling clerk of the House to correct the caption to H. B. No. 222.

S. C. R. No. 10, Relative to the appointment of a committee to represent the State of Texas in bringing about the execution of a compact between the states of Oklahoma and Texas to settle the controversy as to the true location of the boundary line between the two state. (As amended.)

H. C. R. No. 28, Authorizing the enrolling clerk of the House to correct H. B. No. 98.

H. C. R. No. 15, Granting permission to Hugh Everett Carr to sue the state for personal injuries.

H. C. R. No. 30, Authorizing the enrolling clerk of the House to correct H. B. No. 121.

The House has amended the following bill by striking out the enacting clause by a vote of 69 ayes and 40 nays:

H. B. No. 23, A bill to be entitled "An Act to amend Article 4668 of Title 76, Revised Civil Statutes, 1925, defining and relating to pool halls and exempting from the definition thereof, a room, hall or place used for a restaurant or other lawful legitimate business (other than a domino parlor), in which miniature or billiard tables of specific kind and dimensions not to exceed two in number are displayed and used under certain circumstances and restrictions, and declaring an emergency."

Respectfully submitted,

LOUISE SNOW PHINNEY,

Chief Clerk, House of Representatives.

Senate Simple Resolution No. 52

Senator Neal sent up the following resolution:

Whereas, Dr. Thos. R. Day of Center, Texas, is an applicant for a position as Minister to Uruguay, Venezuela, U. S. of Columbia, or Ambassador to Cuba or Brazil, and

Whereas, Dr. Day was for many years a prominent teacher in East Texas schools, is a man of legal and literary turn of mind, as well as one who is interested in agriculture and commerce. He is familiar with the manners and language of the countries to the south of us, and in every

way qualified to meet the duties of the position, and

Whereas, Dr. Day spent many years in the South American countries, and is particularly fitted for the work which he desires, having been connected with one of the largest railroad companies in the industrial and agricultural departments of the same in Brazil, and

Whereas, His contacts with the people of that country were most beneficial to his company, as well as to him personally, and

Whereas, Dr. Day hails from a section of the State—East Texas—which has never been honored in the way of receiving an appointment of such import, and

Whereas, He is heartily endorsed by all of the people of East Texas, as well as by prominent citizens of other sections of the State,

Therefore, Be it Resolved, That the Senate of Texas do endorse Dr. Day for this high and honorable position, and commend him to the graces of the President-Elect of the United States, to Honorable J. A. Farley and to Senators Tom Connally and Morris Sheppard.

NEAL,
COUSINS,
REDDITT

Read and adopted.

S. C. R. No. 17.

Senator Oneal sent up the following resolution:

Whereas, Arrangements have been made for an All-Texas Special train to carry all Texans to Washington to attend the inauguration of the President and Vice-President of the United States on March 4th; and

Whereas, The said All-Texas Special will leave Fort Worth and Dallas on March 1st and will visit the former home of our own John Garner, Vice-President Elect, at Detroit, Texas, and other historic shrines and important cities en route; and

Whereas, It is fitting and proper that suitable music be furnished and be available at all times and occasions throughout the trip; and

Whereas, "The Texans," a band composed of excellent musicians under the direction of Paul Seede of Wichita Falls, has proved itself capable and worthy of representing Texas properly and satisfactorily on occasions of this kind;

Therefore, Be It Resolved by the Senate of the State of Texas, the House of Representatives concurring, That this band, "The Texans," be endorsed as the official band to accompany the All-Texas special train to Washington to attend the Democratic inaugural ceremonies.

ONEAL,	GREER,
PATTON	REGAN,
WOODRUFF,	STONE,
SMALL,	COLLIE,
POAGE,	PACE,
WOODWARD,	REDDITT,
DUGGAN,	PARR.

The resolution was read.

Senator Oneal received unanimous consent for the rule requiring resolutions to be referred before consideration to be suspended.

The resolution was adopted.

Rule Ordered Printed.

On motion of Senator Duggan, the report of the Committee on Rules relative to printing the Joint Rules and Senate Rules was adopted.

House Bills Referred.

H. B. No. 415, read and referred to Committee on Finance.

H. C. R. No. 15, read and referred to Committee on State Affairs.

H. C. R. No. 29.

The Chair laid before the Senate: H. C. R. No. 29, Authorizing correction of H. B. No. 222.

Read and adopted.

H. C. R. No. 28.

The Chair laid before the Senate: H. C. R. No. 28, Authorizing correction of H. B. No. 98.

Read and adopted.

H. C. R. No. 30.

The Chair laid before the Senate: H. C. R. No. 30, Authorizing correction of H. B. No. 121.

Read and adopted.

Motion to Concur.

Senator Small moved to concur in the House amendments to S. C. R. No. 10. The motion prevailed.

Bills Signed.

The Chair, Lieutenant Governor Edgar E. Witt, gave notice of sign-

ing, and did sign, in the presence of the Senate, after their captions had been read, the following bills:

H. B. No. 27.	H. B. No. 177.
H. B. No. 293.	H. B. No. 185.
H. B. No. 69.	H. B. No. 186.
H. B. No. 66.	H. B. No. 219.
H. B. No. 80.	H. B. No. 235.
H. B. No. 140.	S. B. No. 166.
H. B. No. 160.	

Committee of the Whole.

On motion of Senator Woodward, the Senate, at 10:10 o'clock a. m., resolved itself into a Committee of the Whole.

In Session.

The Senate was called to order at 5:34 o'clock p. m.

Senator Hopkins Resigns as Member of Board of Managers.

In offering his resignation as a member of the Board of Managers, Senator Hopkins sent up the following statement to be printed in the Journal:

The Senate of the State of Texas,
Austin, Texas, Feb. 17, 1933.
Hon. C. C. Small, Chairman, Committee of the Whole Senate, Senate Chamber, Austin, Texas.

Sir: In re investigation of matters set out in Governor's message of February 15th, 1933.

I herewith respectfully resign as a member of the Board of Managers named by you on yesterday to conduct the above styled investigation. Reasons impelling me to tender my resignation are, briefly, as follows:

In naming a Board of Managers, you, as Chairman of the Committee of the Whole Senate named two Senators on one side and two to act on the other, or such similar designation. Since I am not an advocate or representative of any person, party or department involved in this investigation and owe no allegiance to any of them, I can not and will not act in any official capacity for any of them. The facts to be developed should properly be passed upon by the Senate, and each member thereof, in a judicial capacity and in no other. I feel that my responsibility as a Senator, and my duty

to the State and our people, looking to their ultimate best interests and welfare require that I maintain a strictly non-partisan attitude in order that I may be free to act on the evidence alone, unbiased and uninfluenced by any partisan activity. To participate as a member of the Board of Managers, in my opinion, would be partisan activity, and at least force upon me a biased attitude toward the charges which, upon their face, are apparently grave and serious.

It is my further understanding that it will become a part of the duty of your Board of Managers to produce witnesses, conduct the examination and present evidence on the charges made. In this connection I have no access to any evidence, pro or con, either in possession of the Governor, the Highway Department or any other person or official, except such as is available to any other member of this Senate. I have no personal knowledge of any of the facts and no means of obtaining such knowledge other than the means open to the Senate as a whole.

This is not a matter which the Senate should consider from a partisan standpoint, nor even as a legislative matter, but purely from a judicial point of view. I decline, therefore, to assume a position which would tend to make of me either a prosecuting or defense attorney, preferring to hear the evidence free from any bias which might affect my judgment when called upon to render a decision thereon.

Feeling and believing, therefore, that this Senate should approach and decide the pending matters in a strictly non-partisan attitude and purely in a judicial capacity, I therefore respectfully withdraw my name and here now resign from your Board of Managers appointed to conduct this investigation.

Respectfully submitted,
W. K. HOPKINS.

Adjournment.

On motion of Senator Woodward, the Senate, at 5:35 o'clock p. m., adjourned until 10 o'clock Monday morning.

APPENDIX**Petitions and Memorials.**

(Telegram.)

Miami, Fla., Feb. 16, 1933.

The Senate of the State of Texas,
Attention Bob Barker, Secy. of the
Senate, Austin, Texas.

Mrs. Gill wishes to express through the medium of this telegram till such time as she can personally express it her sincere appreciation for the resolution adopted by the Senate of the State of Texas wishing her a speedy recovery. Her condition today by reason of the nature of her wound is and will remain critical and uncertain for the next forty-eight hours. She rallied however to transfusion given this morning and is now resting nicely. May I add my personal appreciation for your good wishes.

JOE E. GILL.

Committee on Enrolled Bills.

Committee Room,

Austin, Texas, Feb. 16, 1933.

Hon. Edgar E. Witt, President of the
Senate.

Sir: We, your Committee on Enrolled Bills, have had S. C. R. No. 16 carefully examined and compared and find same correctly enrolled.

GREER, Chairman.

Committee Room,

Austin, Texas, Feb. 16, 1933.

Hon. Edgar E. Witt, President of the
Senate.

Sir: We, your Committee on Enrolled Bills, have had S. B. No. 166 carefully examined and compared and find same correctly enrolled.

GREER, Chairman.

Committee Reports.

Committee Room,

Austin, Texas, Feb. 17, 1933.

Hon. Edgar E. Witt, President of the
Senate.

Sir: We, your Committee on Civil Jurisprudence, to whom was referred S. B. No. 181, A bill to be entitled "An Act amending Article 307 of the Revised Statutes of 1925 so as to provide that the Supreme Court shall admit to the practice of law only such persons who have successfully passed an examination given under the supervision of the Board of Law Examiners and which the Board of Law Examiners shall recommend for

license to practice law, and declaring an emergency."

Have had the same under consideration and I am instructed to report it back to the Senate with the recommendation that it do pass, together with the attached committee amendment, and be printed.

WOODWARD, Chairman.

Committee Amendment.

Amend S. B. No. 181 by striking out Section 3, which is the emergency clause, and inserting in lieu thereof the following:

"Sec. 3. This act shall not become effective nor be in force until January 1, 1934."

Committee Room,

Austin, Texas, Feb. 17, 1933.

Hon. Edgar E. Witt, President of the
Senate.

Sir: We, your Committee on Civil Jurisprudence, to whom was referred S. B. No. 55, A bill to be entitled "An Act amending Article 2237 of the Revised Statutes by dispensing with bills of exception to action on written motions, and declaring an emergency."

Have had the same under consideration and I am instructed to report it back to the Senate with the recommendation that it do pass, together with the attached committee amendments, and be printed.

WOODWARD, Chairman.

Committee Amendment No. 1.

Amend S. B. No. 55 by adding after the word "motions" in the caption, the following: "providing, however, this act shall not apply to criminal procedure."

Committee Amendment No. 2.

Amend S. B. No. 55 by adding a section to be numbered "11" under Section 1, reading as follows, to-wit:

"Sec. 11. This Act shall not be construed nor shall it be made to apply to any criminal procedure or practice now obtaining in the trial courts or in the Court of Criminal Appeals and shall not be construed as repealing, modifying or amending the criminal procedure of the State of Texas now obtaining."

Committee Room,

Austin, Texas, Feb. 17, 1933.

Hon. Edgar E. Witt, President of the
Senate.

Sir: We, your Committee on Civil Jurisprudence, to whom was referred

S. B. No. 64, A bill to be entitled "An Act amending Article 308 of the Revised Statutes by adding thereto provision that attorneys from other jurisdictions shall be required to pass the examination given to other applicants, with exception respecting participation by such attorneys in the trial or hearing of any particular case wherein a resident practicing attorney of Texas is actually employed, associated and personally participating; repealing all laws in conflict, and declaring an emergency."

Have had the same under consideration and I am instructed to report it back to the Senate with the recommendation that it do pass, and be printed.

WOODWARD, Chairman.

Committee Room,
Austin, Texas, Feb. 17, 1933.
Hon. Edgar E. Witt, President of the Senate.

Sir: We, your Committee on Civil Jurisprudence, to whom was referred

S. B. No. 180, A bill to be entitled "An Act giving county courts acting in probate matters authority to authorize guardians of estates of minors to partition real estate in which the minor's estate has an interest in common with other part owner or owners, and providing the procedure for granting such authority by requiring the guardian to file an application describing the land to be partitioned and the terms of contract for such partition and that it is to the best interest of the minor's estate that the land be divided as provided in the agreement and providing that the applications shall be filed and called to the attention of the judge, which application shall be set down for hearing, such hearing to be at least five days after the filing of such application, etc.; and declaring an emergency."

Have had the same under consideration and I am instructed to report it back to the Senate with the recommendation that it do pass, and be printed.

WOODWARD, Chairman.

Committee Room,
Austin, Texas, Feb. 17, 1933.
Hon. Edgar E. Witt, President of the Senate.

Sir: We, your Committee on Civil Jurisprudence, to whom was referred

S. B. No. 14, A bill to be entitled "An Act to amend Article 2549 of the Revised Civil Statutes of Texas

for 1925, so that the requirements and provisions of said article shall remain and be the same as at the present, except that it shall provide that the funds deposited by the tax collector of each county shall bear interest on daily balances 'at the rate, if any, fixed for such deposits of the tax collector by the commissioners court in its order designating such depository or depositories,' instead of 'at the same rate as such depository or depositories have undertaken to pay for the use of county funds,' and declaring an emergency."

Have had the same under consideration and I am instructed to report it back to the Senate with the recommendation that it do pass, and be printed.

WOODWARD, Chairman.

Committee Room,
Austin, Texas, Feb. 17, 1933.
Hon. Edgar E. Witt, President of the Senate.

Sir: We, your Committee on Civil Jurisprudence, to whom was referred

S. B. No. 53, A bill to be entitled "An Act to preserve filed pleadings by making just and convenient regulations to such end; repealing all conflicting laws, and declaring an emergency."

Have had the same under consideration and I am instructed to report it back to the Senate with the recommendation that it do pass, and be printed.

WOODWARD, Chairman.

Committee Room,
Austin, Texas, Feb. 17, 1933.
Hon. Edgar E. Witt, President of the Senate.

Sir: We, your Committee on Civil Jurisprudence, to whom was referred

S. B. No. 56, A bill to be entitled "An Act withdrawing from appearing party review in Court of Civil Appeals by means of writ of error, and declaring an emergency."

Have had the same under consideration, and I am instructed to report it back to the Senate with the recommendation that it do pass, and be printed.

WOODWARD, Chairman.

Committee Room,
Austin, Texas, Feb. 17, 1933.
Hon. Edgar E. Witt, President of the Senate.

Sir: We your Committee on Civil Jurisprudence, to whom was referred S. B. No. 130, A bill to be entitled

"An Act fixing the number and length of terms of district courts in Texas and prescribing rules of practice and procedure by specifying the requisites of citations issued out of district courts; specifying the manner and time for serving citations and making returns therefor, making demands for juries and payment and amount of jury fees; governing the assessment of damages in uncontested cases on liquidated and unliquidated claims; specifying the time for appearance and answer in such district courts; specifying rules for amending pleadings and setting cases for trial, etc., and declaring an emergency."

Have had the same under consideration, and I am instructed to report it back to the Senate with the recommendation that it do pass, and be printed.

WOODWARD, Chairman.

Committee Room,

Austin, Texas, Feb. 17, 1933.

Hon. Edgar E. Witt, President of the Senate.

Sir: We, your Committee on Civil Jurisprudence, to whom was referred

S. B. No. 170, A bill to be entitled "An Act amending Sections 3, 4, 14b, 14d and 14e, Chapter 88, Acts of the Second Called Session of the Forty-first Legislature, so as to provide the license fees on motor vehicles imposed by Chapter 88, Acts of the Second Called Session of the Forty-first Legislature, will not become delinquent until on and after April first of the calendar year for which the license fee is imposed; and prescribing a penalty for failure to comply with the terms of this Act."

Have had the same under consideration, and I am instructed to report it back to the Senate with the recommendation that it do pass, and be printed.

WOODWARD, Chairman.

Committee Room,

Austin, Texas, Feb. 17, 1933.

Hon. Edgar E. Witt, President of the Senate.

Sir: We, your Committee on Civil Jurisprudence, to whom was referred

S. B. No. 167, A bill to be entitled "An Act providing limiting the time within which ad valorem taxes may be collected by the State, any county, municipality, or other defined subdivision, and declaring an emergency."

Have had the same under consideration, and I am instructed to report it back to the Senate with the

recommendation that it do pass, and be printed.

WOODWARD, Chairman.

Committee Room,

Austin, Texas, Feb. 16, 1933.

Hon. Edgar E. Witt, President of the Senate: We, your Committee on Highways and Motor Traffic, to whom was referred

H. B. No. 18, Relative to substituting busses for street cars and interurbans.

Have had the same under consideration, and I am instructed to report it back to the Senate with the recommendation that it do pass with committee amendments, and be printed.

RAWLINGS, Chairman.

Committee Amendment No. 1.

Amend H. B. No. 18 by inserting in Section 1, after the words "to substitute" the following:

"Subject in every case to the approval and consent of the governing body of the city or town where said street, suburban, or interurban railway company is operated."

Committee Amendment No. 2.

Amend H. B. No. 18 by adding at the end of Section 1, immediately preceding the emergency clause, the following:

"Provided, however, companies taking advantage of this Act shall amend their charters and pay the fees provided by law for the filing of such amendments; and, provided that this Act shall not affect any case now pending in the courts; and, provided further that nothing herein contained shall be so construed as to impair the rights of any city under any franchise it may heretofore have granted to the corporation in question, or its predecessor."

Committee Room,

Austin, Texas, Feb. 16, 1933.

Hon. Edgar E. Witt, President of the Senate.

Sir: We, your Committee on Public Printing, to whom was referred the matter of printing the Joint Rules of the Senate and the House, and the Senate Rules, have had the same under consideration, and I am instructed to report to the Senate our recommendation that two hundred (200) copies of said rules be printed in a pamphlet form, as a supplement to the Manual, of a size suitable to be placed in the back of the Manual.

DUGGAN, Chairman.

In Memory of Judge Walter Acker

SENATE SIMPLE RESOLUTION NO. 51.

Senator Woodul sent up the following resolution:

Whereas, God in His infinite wisdom and mercy has taken from the walks of men our friend and neighbor Judge Walter Acker, and

Whereas, We bow in sorrowful submission to His providence, and

Whereas, Judge Walter Acker was born in the State of Mississippi, Monroe County, September 2, 1844. At the age of thirty years he came to Texas, settling in Lampasas County, in the town of Lampasas. He served as District Attorney when the Judicial District comprised fifty counties, and there was no railroad in the district.

Judge Acker was a brave, courageous Confederate soldier, having enlisted in his native State in 1861—Mississippi along with Alabama and Florida having seceded from the Union in January, 1861. During the war between the States Judge Acker served in two companies—Company F, Mississippi Infantry and the 12th Mississippi Cavalry, of which company he became lieutenant. He was a soldier under the dauntless Confederate General Richard Stoddert Ewell, in the Army of Northern Virginia, participating in the battles of Bull Run, Antietam, Wilderness, and Gettysburg.

Lieutenant Acker was a member of President Jefferson Davis' escort, when the President of the Confederacy was captured, but not present on the day of the capture.

Judge Acker was a ripe scholar, a brilliant lawyer and profound jurist. He served as a member of one of the higher courts, having been appointed on the Supreme Court Commission of Appeals by Governor O. M. Roberts. A number of important court opinions were written by him.

About twenty years ago he moved to the city of Houston, where he continued in the practice of his profession. Prior to leaving Lampasas County he served as a member of the Eighteenth Legislature, and after moving to Houston he was elected to serve in the Thirty-ninth, Fortieth, and Forty-first Legislatures as a member of the House from Harris County. He served his constituency faithfully, and had the distinction of being the last Confederate Veteran to represent a Texas district in the Legislature.

Judge Acker was a man of convictions and courage. Like Pope, he believed "A brave man thinks no one his superior who does him an injury," and in the language of Shakespeare he could say, "I dare do all that may become a man." Judge Acker believed there was nothing insignificant in the Divine economy, believing God has a man for every emergency. His consecration to duty fitted him for a varied and most successful public service. In the walks of private life, facing the enemy on the field of battle, wearing the Judicial ermine, in forensic debate in the lawmaking body of his State, on all occasions, amid life's changing vicissitudes, he measured to the full stature of a man.

At the ripe age of 89 he has sheathed his sword, laid by his armour, put aside his toga of service. Indeed a great and good man has fallen. Therefore, be it

Resolved, That the Senate of Texas extend its sympathy to the members of Judge Acker's family, and that a copy of this resolution be spread on a page in the Senate Journal and a copy presented to the members of the family.

WOODUL,	GREER,	ONEAL,	REGAN,
BECK,	HOLBROOK,	PACE,	RUSSEK,
BLACKERT,	HOPKINS,	PARR,	SANDERFORD,
COLLIE,	HORNSBY,	PATTON,	SMALL,
COUSINS,	MARTIN,	POAGE,	STONE,
DeBERRY,	MOORE,	PURL,	WOODRUFF,
DUGGAN,	MURPHY,	RAWLINGS,	WOODWARD.
FELLBAUM,	NEAL,	REDDITT,	

Read and adopted unanimously by a rising vote.

SUPPLEMENT

Transcript of Proceedings of the
Texas State Senate Sitting as a
Committee of the Whole in
the Matter of Investiga-
tion of the Highway
Department.

Chairman, Mr. Small: You will take down the entire proceeding and in the event you don't know the man's name who is making the inquiry, why, you will be furnished that by the Chair or someone. Take plenty of time to get names of everybody and all that is said and done in this Committee hearing.

Senator Woodward: Mr. Chairman, I appear at this time as a member of the Senate, and as one of the four Board of Managers appointed by the Chair. I desire to make this statement at the outset of this proceedings: On the 13th of this month the Governor of the State transmitted to the Senate a message, by the terms of which she made certain statements of facts as relate to past actions of the Highway Commission. In that message, she in fact, preferred certain charges of misconduct upon the part of the members of the State Highway Commission, and indicted the Commission in the matters and things as set out in the message. These charges, were to my mind, and I speak only for myself, of a grave and serious nature, so much so that immediately upon the reception of the message I moved as follows:

"I move that in connection with the message just received from the Governor that before any action is taken on the message that the Governor, Mrs. Miriam A. Ferguson, be requested to submit in writing to the Senate, the source of her information in reference to the matters in the message, including the list of counties involved, and that the Senate resolve itself into a Committee of the Whole for a hearing of the charges and a determination of the facts in reference thereto, Thursday morning at Ten-thirty (10:30) o'clock, at which time the Senate may also investigate any and all other charges which have been made to the effect that the Highway Commission was one hundred million dollars short."

That motion was amended upon

the motion of the Senator from Washington, as follows:

"Amend the motion by striking out the following: 'at which time the Senate may also investigate charges which have been made to the effect that the Highway Commission was one hundred million dollars short' and substituting in lieu thereof the following: 'At which time the Senate may also investigate any and all other charges which have been made or which may arise in connection with the conduct of the affairs of the Highway Department.'"

The motion as amended was adopted by the Senate and the Committee of the Whole organized and authorized to sit, which we are now doing. At that time, Mr. Chairman, recognizing the seriousness of the charges preferred by the Governor, and believing that if true, it was a matter upon which action should be taken. In pursuance of that resolution a Committee was appointed of which you were made the chairman with authority to appoint a Board of Managers to formulate rules of procedure and to conduct the investigation. The President of the Senate, the Lieutenant Governor, appointed the Chairman of this Committee as he is required; you having been named as the Chairman, and you having named a Committee of four to act as Board of Managers, selected me as one of the four, and I speak only for myself. I considered it my duty, Mr. Chairman, as a member of the Board of Managers to endeavor to ascertain facts, which, if possible, would sustain the charges preferred by the Governor. I don't consider it my duty to disprove that which alleged, unless there was some evidence to establish the facts, and then go into all of the matters. As a member of the Board of Managers, I have made a diligent search for evidence, for facts or circumstances which might lead me to believe that I would be justified in offering some proof to sustain the charges made by the Governor. I have diligently searched for some evidence, written, printed or oral which might justify this Committee in making a further investigation, and I stand before you, Mr. Chairman, and before the Committee making this statement, that I have been unable to find any evi-

dence written, printed or oral, which in the least sustains the charges made by the Governor of Texas. Upon the contrary, I have ascertained to my satisfaction, to my belief, that the charges preferred by her, in so far as alleging wrongdoing are unfounded and there is no evidence to sustain them, and speaking only as one of the Board of Managers, I had no evidence to submit that would in the remotest degree sustain any charge the Governor has made in either message which she sent in so far as any wrongdoing is concerned.

Senator Martin: In view of the statement made by the Senator from Coleman I beg to call the Senator's attention to the message as received from the Governor on the 13th day of February and particularly to the heading of each paragraph wherein the Governor says, "my information discloses." The Governor nowhere therein made any charge against anybody; merely laid before this Senate information which she had in her possession at that time. When that message was received here, the Senator from Coleman was the Senator who made the motion that this Senate resolve itself into a Committee of the Whole, and go into a complete investigation of all these matters, that's undertaking to bring in things other than that mentioned by the Governor in her message to this Senate. After that motion was made, there was also a motion made that the Governor furnish to the Senate what we might call a bill of particulars. That has been handed to the Senate, a copy of which I hold here, was delivered here on the 15th day of February, 1933.

Now, since the parties who were calling for the investigation, or the parties who were demanding an investigation, arise at this time and say that they have nothing to present to this Senate, I want to make a motion at this particular time to close this investigation and whatever matters which might be investigated, upon which a report should be made, be passed over to the House and let the House take care of it as the House sees fit.

Senator Woodruff: Mr. Chairman, if it were not for the statements heretofore made by the Senator from Hill in connection with the matters

hereunder discussing, the motion he has just made to the Committee would be amazing. I am not surprised, however, at the attitude taken by the Senator from Hill, when I recall that the Senator opposed making any inquiry into these matters upon the part of the Senate, and that he branded certain charges of a misapplication and misappropriation by the Highway Commission of one hundred million dollars of State Highway funds as a campaign canard. I am wondering if the Senator from Hill is saying to the Senate sitting as a Committee as a Whole this morning that the message of the Governor with reference to these matters is itself a canard and is seeking to divert the attention of the people of the State from the matters referred to in the message. As far as I am concerned I accepted the service as a member of this Committee with a statement that reflected my attitude at that time, as it does now, that I should like to be of service to the State of Texas in my humble way to ascertain the truth or falsity of the matters set forth in the Governor's message to the end that if they be true, and the members of the present Highway Commission are culpable in their conduct that the Senate ought to take notice of such facts and take proper action in those circumstances. On the contrary, I want to also say to the people of Texas if the facts justified it, that there is nothing referred to in the message about which there can be any public alarm, but that, on the contrary, if the Highway Commissioners have deliberately and fraudulently husbanded a public fund that is in their keeping and administered the expenditure of money in that attitude, why, the people of the State of Texas are as interested in this matter as they are in other matters. They want the facts, they want the information; they are entitled to the information, and we as a Committee of the Whole Senate sitting here this morning are equipped and qualified, and in a position to furnish them the facts as they are and it's no time for dilly-dallying around. It is the time for us to act and act with supreme promptness in these matters.

As a member of your Board of Managers, I have made some inquiries these last twenty-four hours

in these matters here under discussion, and I say to you members of the Senate, and of the State of Texas, that I have not found after careful inquiry—I have not found one scintilla of evidence of any kind or character that would tend to brand the actions referred to by the Governor in her message, the Highway Commissioners as being in anywise unbusinesslike; certainly not dishonest and fraudulent. In that connection, however, I have come across some facts and circumstances that tend to my mind at least, to justify the investigation in the fullest and most complete particulars of every transaction involved in the matter referred to in the Governor's message. The facts and circumstances, to my mind, justify being business-like, in the first place, justified as being the most successful method. In the second place, of dealing with the particular problem with which the Highway Commissioners, at the time referred to in the Governor's message, had to deal with. In so far as I am concerned, I think it would be illuminating to the Senate and to the people of the State at this time to know what research and circumstances are, believing they would want to know the facts as they are in every detail with reference to those transactions referred to in the Governor's message, therefore, having found that in the Attorney General's files were certain documents and instruments that did throw some light upon these transactions, and explaining as far as the Attorney General's Department, which is the legal bank of the government, I therefore took it upon myself to invite the Attorney General and some members of his staff here this morning in the belief that you would want to know what is in the files of the legal branch of your government with reference to these transactions.

Your Attorney General has in his file a complete history of all these transactions and he has very graciously consented to lay aside his other many duties and come here at your service and therefore I am going to make a motion at this time as a substitute for the motion of the Senator from Hill, Mr. Chairman, that the Attorney General be invited by the Committee of the Whole at this time to lay his files open for the

inspection of the Committee, and have the Attorney General explain all his files to the Committee as his files contain materials bearing upon these transactions referred to in the Governor's message and ask the Attorney General to furnish the Committee a detailed history of the entire transaction as he knows it to be.

The Chair: I will state that it is my interpretation of the rules that have been adopted that the Attorney General has already been invited to do that, and I take it that his presence here is in response to that invitation; and I merely make that as a statement, with reference to the motion, as I understand it.

Senator Woodruff: Mr. President, I move as a substitute motion to that of the Senator from Hill, that the Senate Committee of the Whole immediately go into the files of the Attorney General, as they bear upon these transactions.

The Chair: The Senator from Hill has moved that further investigation be disposed of, and that the resolution and the file of papers be referred to the House for such action as the House may see fit to take. The Senator from Wise has moved as a substitute that the Attorney General, being present, by invitation of the Senate, that he be requested to open his files and give a detailed history in chronological order, and dispose of the entire transaction. The question is on the substitute. Is there any discussion?

Senator Martin: Mr. President, and members of the Senate, I desire to say at first with reference to whether or not I would say that this message sent here by the Governor to this Senate is a canard; that I presume that after the Senator from Wise had made his investigation, and has become thoroughly convinced that the information which the Governor has submitted to the Senate is not well founded, in so far as he is concerned, then it is a canard. He has investigated this to his own satisfaction, and he states to you that his investigation forces him to the conclusion that there is nothing on earth wrong.

I cannot see where the Governor has invited us, as a Senate, to investigate any person. The Governor merely laid before this Senate the information she had; we have got

that information to act upon as we may see fit. Now, I want to say one word with reference to what would be the result of our investigation. Suppose you start in here and spend an entire week at a tremendous expense to the State, and find that the members of the Highway Commission have been derelict of duty, have been guilty of malfeasance in office, and we have closed our minutes; where does it go, and what does it amount to? We of course, would be giving the newspapers considerable headlines, both morning and afternoon, and they would be delivered to the people second hand. Then, after we have our records here, make up copies of them and have them distributed over the country to the people, that will only tend to agitate them, if there is something found wrong, and we can do nothing about. It seems to me that the time consumed here in going through an expensive investigation, at this tremendous expense that we are going to have to pay, is an utter waste. When we have finished, after we get our report, and have finished, then where does it go? Whatever we say, we send it to the House, for the House's consideration. The members of the House would not take the facts we have developed here as a basis for an indictment against anybody. The House would have to take that and go right back into another investigation, and spend practically the same amount of money over there in order to develop the case again, as a basis for the returning of impeachment charges, if it sees fit to do so. If it does not see fit to do so, then the State has been put to double expense, and to no avail whatever. The common sense thing for us to do, the unbiased, unpartisan thing for us to do here at this time is to say to ourselves, and to one another, that the time consumed here amounts to nothing, to save the people of this State the enormous expense; and then let us send it to the House, and let the House take it into consideration and act on it as it sees fit. If and after it sends anything back to the Senate we will take it up and act on it as the law directs. Where are we going? Where are we headed for, and what are we going to do when we get there? That is the question before

us today. Where are we going, what are we going for and what are we going to do when we get there?

Senator Purl: Do you know of any move that has been made in the House to investigate the Highway Commission?

Senator Martin: Not the slightest bit on earth, no, sir. And so far as I am concerned, we send this to the House and they receive it and file it and let it go into the Journal and say nothing more about it, how on earth, so far as I am concerned, I feel like so far as this entire Senate is concerned we ought to feel satisfied, because this is a separate and distinct body, they act under their rules and regulatory orders and we should not be concerned about it. I cannot see where we are going, and what we are going to do when we get there.

Senator Purl: Didn't the Governor send a copy of this report to the Senate and another copy to the House?

Senator Martin: Not that I know of.

Senator Purl: Didn't the same message that came to us also go to the House?

Senator Martin: Not that I know of.

Senator Purl: If she did send one there, is there any need for us to send them a copy?

Senator Martin: If the House did get a copy, then the only thing is to stop the proceeding we are starting into at this time, and let the House pass upon it and if it sends something to us then we will take some action. I want us to lay aside our partisan feelings, lay aside our bias and prejudice, and let the matter go as it ought to go in a common sense way.

This proceeding would be just exactly like going into a district court and trying to convict a man in the district court before there is any indictment returned. You know it is the grand jury that finds the bills of indictment. Let the grand jury investigate, and when it has handed down an indictment, if it sees fit to do so, we then take it up and act, and if it is no bill there is nothing to do.

Senator Woodruff: Did you vote for the motion calling for the investigation?

Senator Martin: The record will show. I don't remember. But now,

let us figure, some citizen of my home county, for instance, the sheriff, some State official, communicates with the district court and says, "We have certain information here," laying it down before the court. You all know you certainly would laugh at the court if he said, "Well, Mr. Sheriff, summon a jury, we are going into a trial now on this question." And they went ahead and put on the testimony before a jury, the jury would not have any authority to find anybody guilty or not guilty. You have got it, but what are you going to do? The court hasn't even got a right to write a charge. The court would certainly say, "Call in the grand jury, let's lay this before the grand jury, and let the grand jury make the investigation, and after the grand jury has made the investigation if it finds a bill then we will proceed to try."

Mr. President, I am earnest in my insisting that what we are going into here will avail the people of this State nothing. I feel it is a needless expenditure of money that ought to be dropped. This matter should be dropped at this time. The thing to do is send the message to the House, and it is necessary for them to get the information, we have nothing to do except report our progress and get back here and settle down and go to work and save the people this money we are going to spend.

Senator Holbrook: When the Governor sends a message telling us there is over a million dollar shortage in a department don't you think we have a duty to look into that and find out whether that statement is true or false?

Senator Martin: There is a way to do that. If the Governor had not sent the same thing to the House then she should send it to the House.

Senator Holbrook: If the Governor did not expect us to investigate it why did she send it to us?

Senator Martin: Because upon the information in her possession she felt like we as representatives of the people of this State ought to know it.

Senator Holbrook: In other words you want us to sit peacefully by and go to sleep.

Senator Martin: So far as this investigation is concerned we might as well sleep through the whole pro-

ceeding, because in the final outcome where are you going to be when you get to the end of the thing, what are you going to do?

Senator Holbrook: Find out whether it is true or not.

Senator Martin: Suppose we spend the time and find it is true, we can't vote a bill of indictment, we have to let it go through the House and say, "Here is what we found out in the Senate, you examine the same witnesses, go through the same procedure we have gone through with, and after you have done that if you think we are right then vote a bill of indictment, and we will act accordingly."

Senator Holbrook: Do you think that information is true or not?

Senator Martin: I have no reason to question it.

Senator Holbrook: If you think it is true do you think we should leave it and do nothing?

Senator Martin: I think if the Highway Commission came back and told us if it happened like they said, and it has been aboveboard, nothing wrong has happened.

Senator Purl: If I told you that in the House Journal, on page 439, dated February 19th, the identical message was sent to the House, do you still insist we send ours to the House?

Senator Martin: We should either send it to the House or cease operations here, let the House take whatever action too.

Senator Woodward: I want to speak to the motion—the substitute motion as made by the Senator from Wise, in which I heartily concur, and I congratulate him on the motion he has made. I want to make reference in that connection to some of the suggestions as made by the Senator from Hill. After a diligent search and diligent inquiry into the matters and things charged by the Governor I have found no evidence, not the slightest evidence, written, printed, or verbal, that in any degree sustains any charge made by the Governor of this State. And believing that it was my duty, if I found it, to present it to the Senate—and not having found it it was my duty to state to the Committee that I had no evidence to offer, as one who called for the investigation, to sustain any charges she had made. The Senator from Hill deplores the fact that we are bound to consume some time and

expense,—spend the funds of the public. To do what? To hear from the chief law officer of the State who is in possession of the complete files of the entire transaction about which the Governor of the State complains—in possession of the history of it from beginning to end and in possession of opinions which he has given and which the Governor of this State has not seen fit to transmit to the Senate of the State; in possession of facts, undisputed and undenied, that will convince any honest man or woman that every single solitary act done by the Highway Commission of Texas was an honest and an honorable act. The Senator from Hill asks the question: "What are we going to do with it when we hear it?" I want to answer him and say, "Here is what we will do with it; we will take it, together with the charges filed by the Governor of the State and we will make a permanent record that will go into the archives of this State that will be a vindication of an honest Highway Commission and a refutation of the charges made by the Governor of the State." Why are you, sir, who has taken the lead on the Senate floor as the administration leader, objecting now to the chief law officer of the State unfolding before the world an honest and a true transaction that stands every test of every charge she has made. Yes, Mr. Chairman, I say that the motion—the substitute motion, as made by the Senator from Wise,—is a wise substitution. The Attorney General is present, I assume, with assistants who are familiar with the entire transaction from beginning to end. Now that there is no evidence to be offered, even by those who probably believe the charges to be true—as there is no evidence to be offered by those who back the Governor in her program,—most assuredly we shall not be denied the right to lay before the Senate, before the people, a permanent record of an honest transaction.

Senator Martin: Didn't you state a moment ago you had nothing on earth to offer?

Senator Woodward: I said that a diligent search by me, a diligent inquiry by me of the files of the Highway Department convinced me that there was not one single, solitary, scintilla of evidence, written, printed or oral, that would sustain

any charge made by the Governor. Upon the contrary, the evidence I have found refutes the charges made by the Governor of the State. Now, listen, I am going to answer your question. I said that as the author of the resolution calling for an investigation led me to believe it was my duty, if I found anything to sustain the charges, to produce it here before the Senate. I have found nothing and I have no evidence to offer that would sustain the charge. Do I understand you, Senator from Hill, to be one who says to this Senate and to the world, that the Governor has sent a message to the Senate which in its concluding paragraph says, "I deem it my duty to bring said facts to your attention for such consideration as you may deem necessary"—are you one who believes that in view of her message, which is a charge against the Highway Commission, reflecting upon their honesty and their integrity, would you deny the Senate of Texas the right to hear from the chief law officer of the State, a man whom the people of this State respect, and in whom they have confidence, and to lay before the Senate of the State the files that contain a history of this transaction from A to Z?

Senator Martin: Then you are now taking back the statement you made a moment ago to the effect you had nothing to offer, and you are wanting to offer something?

Senator Woodward: I said I had nothing to offer that would sustain the charges. I said upon the contrary from the investigation I have made—and I repeat it—convinces me that every single, solitary item of testimony, or evidence, written, printed, or verbal, will refute—and I mean by that, will disclaim—every single, solitary charge the Governor has made. If that is true, and I believe it is true, are you willing to deny us the right, after an indictment has been found, to show that the Commission is not guilty of the matters and things charged by the Governor?

Senator Martin: That is the way you would proceed on any charge? In other words, undertake to prove the falsity of it before the truth is proven?

Senator Woodward: No, sir. Here is what I would do. I would do that which you are not doing, if I were one who believed the charges were

true, if I were one who represented the administration who filed the charges, I would, by the eternal Gods, come into the Senate with evidence to prove it, or I would stand up before the Senate as I am doing and say, "I have no evidence to support the charges," and I call upon you now, as one who has taken the lead, as an administration leader, to do so.

Senator Martin: (Interrupting) I beg your pardon, sir—

Senator Woodward: (Continuing) I will say this: I call upon you now to state whether you have any evidence that will sustain the charges.

Senator Martin: The charges are given and the bill of particulars is sufficient, I think.

Senator Woodward: In other words, you want to convict a man, or the Commission, upon the charges of the Governor and accept what she says as evidence of the fact, and I will venture the assertion she didn't even dictate the message to the Legislature of Texas, and hasn't read it, and wouldn't understand it if she did read it. I say that a document has come to the Senate making charges against the Commission, reflecting upon their honesty and their integrity. If you have evidence to support it, or if any man has evidence to support it, it ought to come here now and be laid before the Senate that it might be published in the papers and a permanent record be made to preserve it in the archives of the State, and if the facts develop, as we develop from the Attorney General's files, that the Commission is not guilty of any wrong, then it ought to be laid bare before the Senate and before the people of the State, and I hope you, Senator from Hill, will not vote against the substitute motion, in order that we might have an interesting study, one that will discharge the Highway Commission of any wrong, and one that will convince the public, convince the Senate, or any man or woman, that they have directed the expenditure of more than two hundred million dollars of the people's money honestly and fairly and to the benefit of the people of this State, and I hope, Mr. Chairman, this Senate will see fit to vote down the motion as made by the Senator from Hill, and send to the House of Representatives that which they al-

ready have—a copy having been filed with the Clerk of the House. If we are to send them anything let's send them a transcript of the record of the Attorney General's office of all matters in the Highway Department that show the transactions as they were.

Senator Holbrook: Don't you believe that it is our duty to the Governor—not only to the Governor, but to the people of Texas,—that when she sends a message here branding a department of the government with dishonesty, or malfeasance, or incompetence, that it is our duty to investigate those charges and let the people of the State know our verdict?

Mr. Purl: Mr. Chairman, and members of the Committee, I am not one of the managers, but I am a member of the Senate. I think someone said that a good name is better to be desired than great riches. I want to say that this is not going on until these men have proven derelict of duty, or have been given a clean bill of health on the charges which have been made. I want to show that the Governor has made these charges and I am not willing for the Senate to turn it over to the House. If Jim Ferguson will put a padlock on his printing press and a gag in his mouth and be willing to stop these comments,—these activities. I want to show that the message sent to the House is carried on the first page of the Ferguson Forum and is being sent out over the State as an advertisement which makes it possible to increase that circulation. The report is published verbatim in the Ferguson Forum, in the House Journal and the Senate Journal. I will not read the report unless you want me to, but the fact is that it has come from the Governor over the signature of Mr. Ferguson. I take it that no one will question the fact that it is the same report, that is the message published in the Forum and that is published in our Journal, that is, outside of headlines. Now, listen you managers. Listen you who want to stop the proceedings. (reading) "That they just had a little over a million, that's all. Governor Miriam A. Ferguson has stirred up a hornet's nest in the discovery of a shortage in the Highway Department Fund in the sum of a

little over a million dollars. She has sent to the Forty-third Legislature the following message."

Then follows the message. I won't burden you by reading it, unless you want me to. At the bottom of the message it has Mrs. Ferguson's signature, which is signed to all reports and then at the bottom again we have "Jim, the Editor."

Senator Holbrook: Will the Senator yield?

Senator Purl: Now, listen, I will read two lines of the message: "I am informed that the Attorney General informed the Highway Commission in a written opinion that the law did not authorize them to so use State Highway funds and that such action was prohibited by law." And further: "As the loss of the Highway funds appears to be over one million dollars, I deem it my duty to bring said facts to your attention for such consideration as you may deem necessary."

Senator Sanderford: Will the Senator yield?

Senator Purl: One minute. Over a million dollars shortage in the Highway Department which is near the Senate, is here within two or three short blocks, almost right across the street,—we are almost right across the street from the Highway Department's fund, and we shouldn't do anything about it. Just a minute.

Senator Holbrook: Will the Senator yield?

Senator Purl: Just a minute. Now, see what the editor says: (reading) "Now, there you are."—Yes, here we are, that's right,—"we will be if we stop it (continue reading) face to face with the cold-blooded facts. If the Highway Department has intentionally permitted this loss of public funds, then they ought to resign and be condemned for corruption. If they permitted the loss of these funds by ignorance, then they ought to resign on account of ignorance and disqualification to fill the office. The Senate has passed the resolution requesting the Governor to give her source of information and the number of counties involved. She is furnishing this information to the Senate, showing the number of counties and the amount of bonds of doubtful value held by each county. She did not send her message to the Legislature

until she had requested the State Auditor to inspect the records of the Security Trust Company and the State Highway Department, and he in a written report to the Governor has verified all the matters stated in the petition." In what petition? In the petition that's now in our lap, that Jim the Editor says is over a million dollars short.

(Reading) "The Highway Department had violated the laws by attempting to go into the banking business and the bond business, and in such violation they have lost the State over a million dollars." If such violation of the laws of the State has cost over a million dollars, if they have done that they ought to be required to resign and be indicted. Now, listen to this Senator Woodward — —

Senator Woodward: I know it by heart.

Senator Purl: I know.

The Chairman: Senator Woodward, he is waiting for you to listen.

Senator Woodward: Senator, I said I knew it by heart.

Senator Purl: (con't) "No wonder the Highway Department has been so active in seeking to prevent the confirmation of Frank Denison for Highway Commissioner. For the same reason the Highway Department would oppose the confirmation of any other strong-minded and honest man of courage that the Governor might appoint. On with the battle."

What's Mr. Denison got to do with the Highway Department,—he is not even a member. He hasn't anything to do with it and nobody possibly can come in and bring him into this proceeding. (reading) "No wonder the Highway Department has been so active in seeking to prevent the confirmation of Frank Denison for Highway Commissioner. For the same reason the Highway Department will oppose the confirmation of any other strong-minded and honest man of courage that the Governor might appoint. On with the battle." That's signed "Jim, the Editor." (applause.)

The Chairman: The Chair requests one of the sergeant-at-arms to place men in the galleries to suppress all applause and in the event there is applause to remove those guilty. This is not a show but is a solemn undertaking.

Senator Purl: Just a minute. I want to forget Mrs. Ferguson and the Ferguson Highway Department and appeal to the Senate as an humble member of it, a man who has served, I think, to the best of his ability in both Houses. Now, don't let anybody, right or wrong, but keep the integrity of this by saying first to ourselves, and to our people, that when charges are made which have been admitted on the floor of this Senate by my good friend,—everybody knows is Governor. It has been said here time and time again. Now then, I recognize that this when signed by Jim the Editor, that the people of Texas understand that it is signed by the man who is counsel for the Governor,—by the man who is advising the Governor. I have no objection to him doing that. I think he ought to advise her as long as the people have elected her, and I hope he gives her good advice. But when Jim the Editor signs that and it goes out over the State and creates the impression in the minds of ninety-five per cent of the people that the Governor's office has charged that there is a shortage in the Highway Department of over a million dollars, it is called to the attention of the Senate, and the Senate thinks it is too hot to pick it up, and the Senate won't tackle it, but I for one, and I believe that this Senate, regardless of how you felt on Mr. Denison's confirmation show the people that they can look in confidence on their public officials who will be diligent in their duty.

I believe we have the right to assume that she did honestly believe that there was a million dollar shortage in the Highway fund; that it was her duty to call it to the attention of the Senate and it is our duty to look into it. There is no criticism there. Now, then, since the statement has gone out, the Highway Department having been indicted, discredited, I think it should be gone into.

Senator Holbrook: Don't you think that the editor of the Forum ought to retract that statement by stepping into sackcloth and ashes and writing a beautiful tribute to the Highway Commission in next week's issue? Don't you suspect the same hand that wrote that message also wrote the editorial?

Senator Purl: I am assuming that the Governor of Texas, Mrs. Ferguson, urges these charges in good faith. Now then, if they can't be sustained, I think in good faith they should be withdrawn, and since the Forum carried a statement some days thereafter, I think the Senate owes it to the people who are ready and anxious to explain the matter to give them an opportunity so that it may be cleared up.

Senator Redditt: I would like to be recognized when the Senator completes his statement.

Senator Martin: I think somebody said that we did not want to get into personalities, but I just want to state that if the editor of the Forum would sit in sackcloth and ashes, what about all of the other papers in the State, who have carried the entire report?

Senator Purl: I think whoever did it ought to have to do that. I am not talking about anybody that should not be in sackcloth and ashes.

Senator Rawlings: Mr. President, I want to rise to a point of order. The Senator from Hill is out of order for the reason that is not within the scope of the motion that is offered here, not as a Committee as a Whole in the first place. And in the second place because it is beyond our powers to refer the matter to the House inasmuch as we are sitting as a Committee of the Whole Senate, and the only reports we could take would be back to the Senate, we could not dispose of this matter by referring it to the House.

Senator Collie: I want to raise a point to the same effect. We heard the report read the other day; the Senate Committee adopted that report, and the matter under consideration is one clearly for the Board of Managers of this Committee to determine. Under Paragraph 3 of the report, the single privilege to introduce witnesses is given the Managers and places that responsibility with them, and I think they can bring in anybody they want to, the Attorney General or anybody else. The Board of Managers was appointed for the purpose of conducting this investigation. I am somewhat surprised to see that Counsel on the Board have taken opposite sides of the table. If each side is going to investigate and introduce different witnesses, there is reason

for the various departments having their counsel for defense. I assumed when this Board of Managers was appointed they would conduct this examination, but it now seems that we have a division in this Committee, or Board of Managers. If they cannot agree on the question under discussion, it being one for them to decide—whether or not they want the Attorney General brought here—and if they are divided equally they can then appeal to the Committee as a Whole. In that event, and should no further witnesses be called, it would be proper to report back to the Senate Committee.

The Chair: The Senator from Tarrant raises the point of order that the motion is out of order because not included in the scope of the resolution resolving the Senate into a Committee as a Whole. Now, as the Chair understands the motion of the Senator from Hill, the report cannot be made to the House, the Committee of the Whole would report back to the Senate without any action being taken on this matter, other than to transmit the message to the House for such consideration as the House may want to give it. If the Chair correctly understands the motion the point of order would be overruled, but if the motion was made for the Committee of the Whole to refer this to the House the point of order would be good, because I think it is not within the scope of the resolution resolving the Senate into Committee as a Whole. I will hear from the Senator from Tarrant on his point or order.

Senator Rawlings: I want to get this point of order passed on and stop this discussion if I can.

Senator Woodruff: Will the Senator yield?

The Chair: Before the Senator states whether he will yield I suggest that he look at the clock.

Senator Rawlings: I want in addition to say this, that regardless of the form of the motion, as distinguished by the Chair, I don't think this committee could take any action or send it to the House for action. The action should be taken by the Senate. We can only report back to the Senate. Whether it goes to the House or what happens to it is an action for the Senate to take, sitting as the Texas Senate. Regardless

of the form of the motion it has the same effect. In addition to that I want to call your attention to the motion which was made which brought us into a Committee as a Whole. I charge you it is our duty to recess and report progress. The motion of Senator Woodward says, "I move that before any action is taken on the message that the Governor, Mrs. Miriam Ferguson be requested to submit in writing to the Senate the source of her information with reference to the matters and things charged in that message, and that the Senate resolve itself into a Committee as a Whole for a hearing on the charges and a determination of the facts with reference thereto;" and that is all this Committee has power to do, to hear the charges. It has been suggested there is no testimony that either side desires to produce on the charges, to make the investigation, so there is nothing we can do but report back to the Senate. I submit the point of order is good.

Senator Greer: Mr. President, before you rule on that I move we recess until 2:00 o'clock.

(The motion to recess was carried whereupon the Senate adjourned until 2:00 o'clock p. m.)

The Chair: The Committee will please be in order. At the time the Senate recessed the question before the Chair was the point of order raised to the effect that the motion made by the Senator from Fort Worth to the Senator from Hill was out of order in that no authority was given for this Committee of the Whole to make any such report as provided for in the motion. As the Chair understands the motion of the Senator from Hill he merely asks that the Committee of the Whole report back to the Senate that it takes no action,—that no action be taken on this matter in the Senate but it be reported to the House. I believe that the Committee of the Whole has the authority to make that recommendation back to the Senate and I will therefore overrule the point of order. The question now is on the substitute motion of the Senator from Wise that the Attorney General be requested to open his files and present such matters as he might think pertinent. Is there any further discussion of the substitute motion?

Senator Sanderford: I would like to make a few observations with reference to that substitute motion and the motion pending. When the Senator from Gonzales this morning resigned as a member of the Board Managers he stated that it was a matter of judicial procedure, and then since the Senator from Coleman arose to his remarks, which I think were out of order, his personal investigation, and since he came to the conclusion after thoroughly investigating the State Highway Department that there was not the minutest part of any syllable of any mismanagement, any corruption or malfeasance in office,—and then the Senator from Wise arose and said he had made an investigation and said that there is absolutely, in his opinion, no semblance of any mismanagement, it occurs to some who might be interested in carrying this investigation out that perchance the Senator from Coleman and the Senator from Wise, together with two or three others who have arisen on every occasion to hurl defiant remarks at the husband of the Governor of Texas and this administration,—that perchance instead of carrying out the mandate of their oath of office in representing the people of Texas in this investigation, that they have chosen voluntarily, contrary to that, to represent the State Highway Department in this investigation. Therefore, with such attorneys with large experience and great ability electing to defend the State Highway Department rather than to represent the people of the State of Texas in this investigation, we felt that in order that the people of Texas might know the truth, that the people of Texas might know about the money that they have paid into this department, that the facts might be fairly brought out, and that things needed to be brought out might not be submerged under some petty desire, if you please, to reflect upon the Governor, or the husband of the Governor,—therefore, sir, we deemed it wise and expedient and necessary for the best interest of the people of Texas to know and to go to the bottom of the facts that we present over in the House.

Senator Purl: Does that mean you haven't got confidence in the Senate doing that duty and you

want the House to do the job for them?

Senator Sanderford: It means what I say. Analyze it as you see fit.

Senator Purl: May I ask one more question?

Senator Sanderford: Yes.

Senator Purl: Did you join with the other Senators in asking the managers yesterday that in the rules of procedure,—you demanded that the Governor of Texas have an attorney, and didn't they give you one?

Senator Sanderford: That is right.

Senator Purl: And don't you now go back on it and say he doesn't want one.

Senator Sanderford: She never said she wanted one.

Senator Purl: We gave her one if she wanted it?

Senator Sanderford: Certainly.

Senator Purl: Didn't you ask for it?

Senator Sanderford: Certainly.

Senator Purl: Do you still want her to have one?

Senator Sanderford: I want her to have the privilege if she wants it.

Senator Purl: And you object to the Highway Department having an attorney?

Senator Sanderford: Not a bit, but I want to say to you that the managing board has recommended that the State Highway Department have a corps of attorneys, if you please, and the Governor not have one. It is just a matter of a square deal, that is all. Now, gentlemen, back to the reference of the Senator from Coleman and the Senator from Wise that there was absolutely no iota of any evidence pertaining to mismanagement of this affair, and stating they had conducted an investigation thoroughly, I want to ask the gentleman a question, if I might.

Senator Woodward: I will answer it.

Senator Sanderford: Did you investigate the sixty thousand dollar, or more, checks from Athens in which the State Highway Department had that check post dated,—a post dated check from this county, and when the time came for that check to be cashed it was not presented, and then when the bank went broke, if you please, into

liquidation, and the State Highway Department did not present that check for a claim of their share of the liquidating assets, did you investigate that thoroughly?

Senator Woodward: Do you want me to answer that categorically?

Senator Sanderford: Say yes or no, is good enough for me.

Senator Woodward: Are you testifying to those facts?

Senator Sanderford: I am.

Senator Woodward: Yes, sir, I investigated it.

Senator Sanderford: And there is nothing to it?

Senator Woodward: To what? There is no wrong in it.

Senator Sanderford: No wrong?

Senator Woodward: If there is, why don't you produce your evidence?

Senator Sanderford: All right. That is all I want to know. I just want to know if you investigated that.

Senator Woodward: Yes, sir.

Senator Sanderford: All right. Now, might I ask you, sir, did you investigate the fact that in June, 1932, that in the maintenance department of the State Highway they employed 2302 extra men over the year before?

Senator Woodward: Yes, sir, and found it is less than the average Highway Department employed over the same period over the United States.

Senator Sanderford: That doesn't answer the question.

Senator Woodward: I investigated it.

Senator Sanderford: All right, let's go to August, now.

Senator Purl: A point of order.

The Chair: State your point.

Senator Purl: I raise the point of order the Senator from Bell is undertaking to put information into the Senate's Journal that is privileged matter—that is not evidence, that nobody has sworn to it, and it is undertaking to bolster up some charges and is not on the stand testifying, and neither is Senator Woodward, and I object to any of that going into the Journal unless somebody will come in here and under oath testify to it as a fact.

Senator Sanderford: Then I object to any part of these gentlemen's speeches going in this morning with reference to their private investigations.

The Chair: The Chair overrules the point of order and takes it the Senator will discuss the motion pending before the Committee.

Senator Purl: I raise the point of order that we are assembled as a Committee of the Whole for the purpose of investigating the matter brought by the Governor of Texas, and that ought to come first. He is now putting into the record things not in the scope of the Governor's message.

The Chair: The Chair overrules the point of order and states the Board of Managers has authority to delete the record and eliminate all matter they think unnecessary and would not be beneficial.

Senator Purl: You will give me a bill of exceptions?

The Chair: I will give you a full bill.

Senator Sanderford: In view of the statement of the two gentlemen on the examining board—the Managing Board—according to their statement it absolutely belies the figures in the statement made by the State Auditor. He has compiled that and made it under oath, that there is gross mismanagement there and recommended that there be a legislative investigation of that department. I will just read a portion of the recommendation of the State Auditor made under oath. "It is recommended that a careful investigation be made by a legislative committee to determine whether or not the sureties, who turned over assets to the liquidating agent of the bank, kept the spirit of their agreement by actually delivering all such assets owned, and to determine whether or not there is a liability on the part of the other sureties.

"The situation has been mismanaged so completely and the interests of the State of Texas and of Henderson County in this case have been neglected so flagrantly, that it is recommended that all of the circumstances relating to the deposit of State and county funds in this bank and the later liquidation of the bank be investigated thoroughly by a committee of the Legislature, in order to place the responsibility for the loss that has, apparently, been suffered by the State and by the county, and for the entire situation as it now exists."

Senator Holbrook: You state the

State Auditor is in favor of an investigation. You are also?

Senator Sanderford: I voted for it.

Senator Holbrook: Then why are you running from it?

Senator Sanderford: That is what I am telling you. Things have developed that have caused me to believe the real facts in the case might be submerged—

Senator Holbrook: (Interrupting) You see the fire coming and want to run from it?

Senator Sanderford: I do not. I want it brought out fully, but I want it brought out in a body—

Senator Holbrook: (Interrupting) Let's bring it out then.

Senator Sanderford: A body representing all of the people and not where one-third is representing the Highway Department.

Senator Holbrook: Do you accuse the Senate of not being representative of the people?

Senator Sanderford: In this matter it is very apparent that certain members of the Senate are representing the State Highway Department and not the people.

Senator Woodward: Has it ever occurred to you that there might be some suspicion of somebody in here representing the Governor?

Senator Sanderford: Your suspicions might be well founded, in view of the fact that the Governor is representing the people of Texas. Gentlemen, I urge you, in view of the proceedings this morning, from which it is evidenced on the face of it that possibly there might be certain facts that might be withheld, that it be changed over to the House, where a full and impartial hearing might be had. Then, if they find a sufficient amount of trouble there, to bring an indictment and then it can come over here.

Senator Woodward: Senator, if you are afraid some member of the Senate probably won't develop the facts, is there anything to keep you from developing them?

Senator Sanderford: There may be. I am not an attorney and possibly not capable to do it.

Senator Woodward: Is there anything to prevent the Governor from having someone here to develop the facts?

Senator Sanderford: I then move that we also proceed with the investigation of the excessive campaign

expenditures in the last two or three weeks of July. I don't know that Jim Ferguson or Mrs. Ferguson are interested in the proposition—

The Chairman: (Interrupting) I think you are out of order, Senator.

Senator Sanderford: I appeal to you gentlemen to defeat the substitute of the Senator from Wise so that we can get back to the motion to refer it to the House.

Mr. Blalock: I don't want to enter into any extended remarks, Mr. Chairman, but I do arise as an attorney for counsel for the Highway Commission, and primarily for the absent member thereof, to respectfully protest against the efforts to drop this investigation in its inceptive stage. It is my contention, sir, that the administration of the present Highway Commission has been honest and sincere and devoted to the public weal, but that there are two members of that Commission who can stand before this body and defend themselves. I primarily arise therefore to lift my voice for the absent member who lies, I fear, upon his death bed. He has crossed swords with the best of men of Texas during his time, and the sparks have been bitter and the flashes at times have been hotter but until this day no man has arisen in Texas to challenge the personal integrity and honesty of Cone Johnson, and for that reason, sir, I believe that I speak the wishes of the people of Texas, and primarily of his own section when I cry out to this Senate not to stifle any opportunity that his friends might have to lay before this body and the people of Texas the record he has made as a public official as he lies helpless and unable to raise his hand or his voice. We seriously beseech you to give us an opportunity to speak for him that the people may know the truth.

The Chairman: Is there any further discussion?

Senator Sanderford: Would you as well like to defend in the other Body the same as in this Body?

Mr. Blalock: I would be willing to defend him before any body, but I do respectfully say that these charges have been filed here, registered, heralded to the people of the State by this resolution, and we do not think it would be fair to deny us the opportunity to defend that resolution in your body where the

investigation started and was ordered.

The Chairman: The question is on the substitute motion of the Senator from Wise—that the Attorney General open his files and present such information as he may have in connection with the charges contained in the resolution and the bill of particulars from the Governor.

Senator Russek: The substitute is to invite the Attorney General to open his files and give such information and data in connection with these charges as he might have.

(A roll call of the members present showed twenty-eight voting yea and one nay.)

Senator Sanderford: I make a motion that we proceed first into going into the matter of investigating the excessive cost of campaign expenditures in the months of July and August.

The Chairman: Is that contained in the specifications? I take it that the Committee was assembled here for the specific purpose, and I don't remember that purpose specified and I am compelled to hold that out of order at this time.

The Attorney General has been invited to present his files prepared in connection with these charges, and the Chair recognizes the Attorney General and asks that you give him your attention and that quiet be maintained in the Senate Chamber.

Senator Martin: Before we proceed I want to ask that process be issued for Mr. Henck, as I understand he is in charge of the accounts in the Highway Commission, to appear before this Committee and bring with him such records as he may have showing contracts entered into by and between the Highway Commission and these various counties mentioned in the Governor's bill of particulars; also all escrow agreements entered into by the various county commissioners and the Highway Commission, and any other institution in which any fund or securities of any kind may have been deposited. I also want to ask for process for the cashier and president of the Security Trust Company, in the City of Austin, also for the American National Bank, in the City of Austin, to appear before this Committee, bringing with them evidences of such securities as may have been deposited with them by the Highway Com-

mission, or by the county commissioners courts, the county judge, or any other official of any of these counties that have been mentioned in the Governor's bill of particulars here.

Also Mr. Carl Klinger and Mr. Kingsbury of the State Highway Department.

I also want to ask in reference to Mr. Henck that he bring with him such check or checks as he now has given by any county or subdivision of any county to the Highway Commission upon any estimates that might have been made upon any projects that might have been in course of construction in any of those counties mentioned in the Governor's bill of particulars, as presented or handed to the State Highway Department because of any bill presented to the county or subdivision of the county upon estimates made by the Highway Department. Also we would want any special agreement or agreements entered into by and between the Security Trust Company of the City of Austin, and the State Highway Department of the State of Texas.

The Chair: We have no objection at all to the issuance of the process, of course, in accordance with the request of the Senator from Hill, but we rise to suggest that process for any of the employees of the Highway Department is not necessary. If the Senator will furnish the name and list of the documents he wishes produced upon the part of the management we assure him they will be here without the necessity of process.

Senator Martin: I stated them to the reporter, and suggest that he transcribe it and deliver it to the presiding officer of this Committee in order that the presiding officer may have the process issued.

The Chair: Do you have the name of the cashier of the bank?

Senator Martin: No, sir, I asked for the president or cashier.

The Chair: If the reporter will transcribe the request of the Senator from Hill the process will be issued. I don't know just what process you desire.

Senator Martin: It will be a process duces tecum.

The Chair: I don't know what kind of subpoena to send out. Do you know what kind, Senator?

Senator Martin: No, sir.

Senator Holbrook: We suggest that the request be made, to save the expense of process.

The Chair: The Senator is a member of the Board of Managers and has a right to ask that process issue for whoever they wish.

Senator Purl: I make a motion that all motions hereafter offered shall be in writing. The stenographer stop and write up that particular motion, and I make a motion that all motions be reduced to writing.

The Chair: You are going to slow things up that way. I will try to handle that, as best I can. Is there any further request for process?

Senator Martin: It has been suggested that most of the parties that we have asked for will appear voluntarily, and that the information that we ask will be brought in voluntarily. It don't make any difference to me, if that is the case, whether the process is issued or not.

The Chair: I will see that you get whatever process that you want.

Mr. Petsch: I want to state for the Highway Department, that it will send all of its employees, or any of its employees, and any and every document at the time the Committee wants them; but it is impossible, on the statement which has been made to get these men up here, because we couldn't in, and we did not understand the records, we didn't have a description of the records that were wanted.

The Chair: When the request is transcribed I will submit it to you, and if you can agree on it all right, and if not, I will try to get the process out. Is there any further question before the Attorney General is heard? All right, if there is none, we will proceed if you please. All right, Mr. Attorney General.

General Allred: Mr. Chairman, ladies and gentlemen of the Committee, the Attorney General's Department is appearing in response to the resolution that was introduced and adopted here, in response to the request of the Committee of the Senate and we are appearing for the Attorney General's Department. At the very outset I desire to direct the attention of the Committee to the fact that the Governor's message as printed in the Senate Journal charges in substance, as I understand, that the Highway Department

has violated the law, and has violated the law as construed by the opinion of the Attorney General's Department. We, of course, are in no position personally to attest to what the records of the Highway Department will show that that department has done. Any opinion of this Committee would necessarily be relying upon the statements of that department, which is represented here by counsel. We can present and will present at this time to this Committee, and for the information of this Committee the written request for an opinion that was addressed to the Attorney General's Department under date, I believe, of January 14th, 1932, by the Highway Department, and subsequent communication with reference to that request for an opinion. We will likewise present to the committees copies of the opinion rendered by the department. Judge Gaines, former county judge of Brazoria County, and an assistant Attorney General, is one of the authors of the opinion of the department and he is here in person. I will ask the indulgence of the Committee and have Mr. Elbert Hooper, Assistant Attorney General, to conduct the examination, or such part of it as the Attorney General's Department must participate in; and such statement with reference to the records we are able to present here, in addition to the assistants that wrote the opinion which represents, Mr. Chairman, ladies and gentlemen of the Committee, the opinion of the Attorney General's Department. I will ask Mr. Hooper to present the matter to the Committee. We are, of course, unable to answer as to whether or not the Highway Department has followed that opinion. They are here through their attorneys, and I am sure will be glad to bring their record, as these gentlemen have stated to the Committee.

The Chair: Mr. Hooper is recognized.

Mr. Hooper: With the permission of the Committees I will call Mr. Gaines and ask that he be sworn.

Judge Scott Gaines, called as a witness, having been duly sworn, in response to questions propounded to him, testified as follows:

Questions by Mr. Hooper: For the purpose of the record your name is Scott Gaines?

A. Yes, sir.

Q. You are Assistant Attorney General of the State of Texas at this time?

A. Yes, sir.

Q. Holding such position during the year of 1932?

A. Yes, sir.

Q. Mr. Gaines, have you read the message addressed to the Legislature on February 13th, and the one addressed to the Legislature on February 15th by the Governor of Texas?

A. Yes, sir.

Q. Relating to certain transactions of the Highway Department?

A. Yes, sir.

Q. Are you familiar and were you familiar in your official capacity with those matters during last year?

A. Yes, sir.

Q. When were these matters first brought to your attention, to the attention of the Attorney General's Department officially?

A. I believe it was first brought to the official attention of the Attorney General's Department in a communication addressed to the Attorney General from Honorable Cone Johnson, Highway Commissioner, in a letter dated January 14th, 1932.

Q. Do you have that letter in your possession?

A. Yes, sir.

Q. Will you please read that letter?

A. Yes, sir.

(The witness read the letter above referred to.)

Q. Do you have a photostatic copy of the original request for information by Mr. Johnson, Mr. Gaines?

A. Yes, sir.

Mr. Hooper: We want to offer this letter in evidence.

The Chair: This letter is received as Attorney General's Exhibit No. 1.

The State of Texas

State Highway Department

Austin, Texas, January 14, 1932.

Hon. James V. Allred,

Attorney General,

Austin, Texas.

Dear General:

The conference which we attended yesterday afternoon developed that a very serious and acute situation exists with many counties of the State, and banks with which the counties have deposited bonds to secure escrow deposits covering the

counties' share of the cost of the improvement of their highways through the Highway Department; a situation brought about by the present disturbed financial condition of the country which has resulted in great depreciation in the market value of these securities; in many instances there being no market for these bonds. As a measure of relief to these counties and depository banks, I submit for your consideration and views, the following proposed plan or arrangement:

At present these matters are handled through the Highway Department as follows:

When the Highway Commission and the county have come to agreement for the improvement of a highway, including the share of the cost of such improvement to be borne by the county, the county is required to furnish satisfactory assurance or security that the county's share of such construction as agreed upon will be forthcoming as the work proceeds, and as the Highway Department makes call upon the county to remit its share of the same. This is accomplished by the county depositing or turning over to some bank or trust company its bonds or securities; whereupon the depository bank issues a certificate of deposit, reciting, in substance, that there has been deposited and is on deposit with it a stated sum to cover the county's share of the cost of the project in question, that such deposit will not be diverted and will be paid out only on the order of direction of the county in accordance with agreement between the Department and the county. The Highway Department carries on the work and advances the entire cost thereof, and from time to time, makes requisition on the county for its share of such expenditure as the work proceeds. There is now probably some \$6,000,000 of county bonds which has thus far been put up in the manner stated to secure counties' share of highway work; and in view of the existing situation it will unquestionably work hardship and great loss on counties and on these escrowing institutions which have issued escrow certificates as stated, if they are now to honor checks or drafts drawn upon them to cover the counties' share of the cost of highway construction.

If the Highway Commission can, without violating the law, enter into arrangements with counties to accept their bonds or securities in satisfaction of their share of the cost of proposed construction, or to secure the same, the counties transferring and delivering to the Department the bonds or securities; such arrangement would automatically release, pro tanto at least, the escrow agreement and certificate and render it unnecessary for counties to draw upon the escrowing institution from time to time for the amount due by it to the Department. No doubt, in many instances at least, the bonds of counties are still held by the escrowing banks, and in many others, where the bonds have been sold or transferred by the bank such transfer was made under what is known as a repurchase agreement by which the original holding bank may have the bonds re-transferred to it. These, however, are matters of arrangement which would concern more particularly the counties and escrowing banks; the Highway Department being interested, primarily, in the bonds being transferred to it. The particular question upon which I solicit your views is:

Is there legal objections to the Highway Department pursuing the course which has been indicated; that is, do you find any provision or principle of law inhibiting the Highway Department from pursuing the course of having the bonds of counties transferred and delivered directly to the Department to cover their share of the cost of highway construction or to serve as security for same?

It is of greatest importance at this time that some arrangement can be hit upon by which counties may be relieved from the existing situation and the enormous loss which would fall upon them if their bonds are to be sacrificed, and by which relief may be extended to the banks and institutions holding under escrow arrangements, the bonds of counties as stated.

I have not conferred with my associates on the Commission as to the details of this matter and, of course, whatever arrangement may be hit upon the Commission will have to act on same.

We will meet in regular session, next Monday, January 18th, and I

would like very much, if possible, to have this legal phase of the matter considered so that the Commission, when it meets, may take up the matter at that time. I am sure you will do all that you can do, within the limits of your office, to aid in working out some plan to meet the present emergency, the seriousness of which, I am sure, concerns you as well as it does myself.

Very respectfully,
(Signed) CONE JOHNSON.
Highway Commissioner.

Q. Did you receive from the Highway Department, and from Mr. Johnson as a member of the Highway Commission another letter with respect to the questions which were propounded in the letter of January 14th?

A. Yes, sir.

Q. What was the date of that letter?

A. We received another communication from Mr. Johnson written on the stationery of the Highway Department dated January 26th, 1932, addressed to the Attorney General.

Q. Will you read that letter, please?

A. Yes.

(The witness read the letter above referred to.)

Q. Now, there was attached to that a resolution which had been adopted by the county judges at the conference to which he referred in his letter?

A. Yes, sir.

Q. I wish you would read that document?

A. I will.

(Thereupon, the witness read the document referred to.)

Q. Judge Gaines, in addition to the facts which are disclosed in the two letters which have just been read I will ask you to state to the Committee whether or not you had the benefit of other facts which were developed by means of conferences between you and Mr. Koons, an Assistant Attorney General, and members of the Department?

A. Yes, sir, that is true.

Q. Now, do you have in your possession where the file which has been furnished by the Highway Department under the certificate of the acting secretary which shows the minutes of the meeting of the representatives of the various counties which were involved?

A. Yes, sir.

Q. Have you read those minutes?

A. I have read them, yes, sir.

Q. I will ask you to state whether or not the facts which are contained in the minutes in that file are facts which you had in your knowledge at the time you wrote the opinion which we will presently introduce?

A. Yes, sir.

Mr. Hooper: Mr. Chairman, with the understanding that we will prove these minutes up, I wish at this time to have read by the secretary the minutes of the meeting of the representatives of the various counties of Texas affecting this matter, as representing the facts which were considered by Judge Gaines and Mr. Koons in writing this opinion.

Senator Martin: Is that the minutes of the State Highway Department?

Mr. Hooper: The minutes which were prepared by Mr. Johnson and the representatives of the various counties who were affected at the time of the meeting held in Austin on January 26, and January 27 of 1932.

Senator Martin: Is it an act of the State Highway Department?

Mr. Hooper: No, it is not. It is under the certificate of the secretary, and it is an official act of a representative of the Department,—Mr. Johnson, one of the commissioners. We introduce it for the purpose, Mr. Chairman, of showing the facts in the mind of the Attorney General and the facts upon which they based in writing the opinion which is referred to in the message of the Governor.

Senator Martin: For that purpose we offer no objection, but if it is offered as the minutes of the Highway Department at this time we would want to offer an objection to it.

Mr. Hooper: We offer it for that purpose.

The Chair: All right.

Mr. Hooper: I wish to offer as the Attorney General's Exhibit No. 2 the letter of January 26, signed by Mr. Cone Johnson.

The Chair: And there is attached to that letter the resolution.

Mr. Hooper: And the resolution of the representatives of the counties is attached to the letter.

The State of Texas
State Highway Department

Austin, Texas, Jan. 26, 1932.

Hon. James V. Allred, Attorney General, Austin, Texas.

Dear Sir: I wish to supplement my letter to you of January 14, 1932 in which your opinion was solicited on the following question:

Do you find any provision or principle of law inhibiting the Highway Department from pursuing the course of having the bonds of counties transferred and delivered directly to the Department to cover their share of the cost of highway construction or to serve as security for the same; by calling your attention to certain developments since the writing of this letter:

Some days ago the Highway Department received from certain counties drafts or checks drawn on a local institution at Austin with which they had deposits resulting from the sale of county highway bonds. These drafts or checks were deposited by the Highway Department with the State Treasurer for collection and credit. On that day I was authentically informed that if these checks or drafts were presented and their payment insisted upon the institution was not in current funds sufficient to meet the same and that the result would apparently have been the closing of the institution. A number of counties have their bonds on deposit with that institution and the closing of it would have resulted in the tying up of something over \$2,000,000.00, of Highway funds which were to be devoted to the payment of the counties' share of the cost of construction of their highways. The bond and financial situation of the State and of the country is such that there is now practically no market for these highway bonds though the same are perfectly sound in every respect. I, therefore, wish to call your attention to the fact that if the method or procedure provided in certain sections of the statutes relating to highway construction are pursued, that is, if counties, in some instances at least, the depositories will not have current funds on hand sufficient to meet such drafts as they are presented in due course of things and the result will be some institutions will be closed and the whole program of county aid for highway purposes

will be upset and seriously interrupted.

In view of the situation which exists, I called a number of county judges and county commissioners of the State, some sixteen or eighteen in number, whose highway funds were in the condition stated, for conference that they might consider the situation, and, if possible, devise or suggest some plan or program by which this situation might be remedied. After having duly considered the situation they have requested me, in their behalf, to submit to you, for your consideration and opinion, certain tentative resolutions adopted by them unanimously, which are hereto attached. The representatives of the following counties were present and adopted the resolutions:

Bell, San Jacinto, Tyler, Van Zandt, Pecos, Reagan, Roberts, Andrews, Liberty, Refugio, Colorado, Gaines, Live Oak, Madison, Wheeler, Matagorda, and Concho.

In this connection I call your attention to the circumstance which has developed that in most instances the counties having highway bonds and desiring to provide funds to cover their share of local aid as agreed upon with the Highway Department, sold or transferred the same to the escrowing depository or banking institution and to secure credit for the amount of the bonds at the same time taking security from the bank consisting of a list of municipal securities of various character sufficient, in the opinion of the county authorities, to cover the proceeds of their bonds. These securities, I am informed, are still intact and held by the counties, or have been put up in trust for safekeeping with responsible institutions. I therefore desire to present for your consideration, the fact that the procedure prescribed in the statute by which the Highway Department is to present to counties from time to time accounts covering the sums advanced by the Highway Department for their account and for remission by the counties of the amount, under existing circumstances is practically inoperative, at least in many instances, and although county bonds have been issued and the same have been sold or disposed of to provide funds covering county aid the funds are not,

in fact, available for the counties to draw on to rebate the Highway Department for advances made by it for the account of counties. Therefore, a pressing emergency exists to cover which the counties, as I understand, in their conference this morning, adopted the resolutions which I am transmitting to you. They request me to solicit your opinion, in their behalf, on these resolutions and ask your opinion whether any or all of their proposed plans will prove illegal.

The gentlemen are still in the city but some of them have stated that they must return home very shortly, for which reason and on account of the urgency of their matters, they request as early an opinion as your Department can give.

Sincerely yours,

(Signed) CONE JOHNSON,
Highway Commissioner.

1. Be it resolved, That it is the consensus of opinion of the county officials assembled that the State Highway Department, after examination of the same, be requested to accept bonds, or other obligations of any political subdivision of the State of Texas which are not in default, including those which are now held as pledges to secure funds presently to be used in road construction under the State Highway Department, in lieu of cash when and as highway bills are presented to the county for payment, and further be it resolved;

2. That pending the granting of such request or the working out of some other method through which counties having deposits based on county or road bonds or other municipal securities to secure county deposits can receive cash for their deposits, that the Highway Department be requested either not to bill the counties involved for their part of roads being constructed under the supervision of the Highway Department until the funds are actually available or, if it is found legally necessary to bill as the work progresses, that the Highway Department be requested to impound and hold checks against depositories if in the opinion of the county or the State Highway Department such checks cannot be cashed without imperiling the ultimate safety and payment of the funds of the county or counties involved, and further be it resolved;

3. If in the opinion of the Highway Commission it is desirable to escrow bonds or other securities now forming the basis of pledge for county deposits with the Department for safekeeping pending the liquidation of county indebtedness to the Department, that the same be accomplished through action of the Department and through consent and cooperation of the individual counties involved.

Mr. Hooper: There are only certain portions of the file which I now offer which I desire read at this time, unless members of the Committee desire to have them read, and I will only request that the first page—

Senator Stone: I will ask what you have in your file that you are now reading.

Mr. Hooper: There is contained in the file photostatic copies of the opinions of the Attorney General's Department which were written in response and in reply to the two letters which have just been read. I do not care to read those at this time.

The Chair: Direct the Secretary to those portions you want read and the Secretary will read them.

(Thereupon, the Secretary of the Senate read as indicated by Mr. Hooper.)

Mr. Hooper: For the purpose of the record, the letters to which he has just referred are letters which have already been read by Mr. Gaines and the Secretary.

For the purpose of the record, the resolution which follows has already been read as an attachment to the second letter of Mr. Cone Johnson requesting the opinion of the Attorney General.

Mr. Chairman: We offer as Attorney General's Exhibit No. 3 such portions of the file as have just been read, which I will properly identify for the reporter.

State Highway Department
Austin

January 14, 1932.

Hon. James V. Allred,
Attorney General,
Austin, Texas.

Dear General: The conference which we attended yesterday afternoon developed that a very serious and acute situation exists with many counties of the State, and banks with which the counties have deposited bonds to secure escrow deposits covering the counties' share of the cost of the improvement of their highway

through the Highway Department; a situation brought about by the present disturbed financial condition of the country which has resulted in great depreciation in the market value of these securities; in many instances there being no market for these bonds. As a measure of relief to these counties and depository banks, I submit for your consideration and views, the following proposed plan or arrangement:

At present these matters are handled through the Highway Department as follows:

When the Highway Commission and the county have come to agreement for the improvement of a highway, including the share of the cost of such improvement to be borne by the county, the county is required to furnish satisfactory assurance or security that the county's share of such construction as agreed upon will be forthcoming as the work proceeds, and as the Highway Department makes call upon the county to remit its share of the same. This is accomplished by the county depositing or turning over to some bank or trust company its bonds or securities; whereupon the depository bank issues a certificate of deposit, reciting, in substance, that there has been deposited and is on deposit with it a stated sum to cover the county's share of the cost of the project in question, that such deposit will not be diverted and will be paid out only on the order or direction of the county in accordance with agreement between the Department and the county. The Highway Department carries on the work and advances the entire cost thereof, and from time to time, makes requisition on the county for its share of such expenditure as the work proceeds. There is now probably some \$6,000,000 of county bonds which has thus far been put up in the manner stated to secure counties' share of highway work; and in view of the existing situation it will unquestionably work hardship and great loss on counties and on these escrowing institutions which have issued escrow certificates as stated, if they are now to honor checks or drafts drawn upon them to cover the counties' share of the cost of highway construction.

If the Highway Commission can, without violating the law, enter into arrangements with counties to ac-

cept their bonds or securities in satisfaction of their share of the cost of proposed construction, or to assure the same, the counties transferring and delivering to the Department the bonds or securities; such arrangement would automatically release, pro tanto at least, the escrow agreement and certificate and render it unnecessary for counties to draw upon the escrowing institution from time to time for the amount due by it to the Department. No doubt, in many instances at least, the bonds of counties are still held by the escrowing banks, and in many others, where the bonds have been sold or transferred by the bank such transfer was made under what is known as a repurchase agreement by which the original holding bank may have the bonds re-transferred to it. These, however, are matters of arrangement which would concern more particularly the counties and the escrowing banks; the Highway Department being interested, primarily, in the bonds being transferred to it. The particular question upon which I solicit your view is:

Is there legal objection to the Highway Department pursuing the course which has been indicated, that is, do you find any provision or principle of law inhibiting the Highway Department from pursuing the course of having the bonds of counties transferred and delivered directly to the Department to cover their share of the cost of highway construction or to serve as security for the same?

It is of greatest importance at this time that some arrangement can be hit upon by which counties may be relieved from the existing situation and the enormous loss which would fall upon them if their bonds are to be sacrificed, and by which relief may be extended to the banks and institutions holding under escrow arrangements, the bonds of counties as stated.

I have not conferred with my associates on the Commission as to the details of this matter and, of course, whatever arrangement may be hit upon the Commission will have to act on same.

We will meet in regular session next Monday, January 18th, and I would like very much, if possible, to have this legal phase of the matter considered so that the Commission, when it meets, may take up the mat-

ter at that time. I am sure you will do all that you can do, within the limits of your office, to aid in working out some plan to meet the present emergency, the seriousness of which, I am sure, concerns you as well as it does myself.

Very respectfully,

(Signed) Cone Johnson,
Highway Commisisoner.

January 26, 1932.

Hon. James V. Allred,
Attorney General,
Austin, Texas.

Dear Sir: I wish to supplement my letter to you of January 14, 1932, in which your opinion was solicited on the following question:

Do you find any provision or principle of law inhibiting the Highway Department from pursuing the course of having the bonds of counties transferred and delivered directly to the Department to cover their share of the cost of highway construction or to serve as security for the same; by calling your attention to certain developments since the writing of this letter.

Some days ago the Highway Department received from certain counties drafts or checks drawn on a local institution at Austin with which they had deposits resulting from the sale of county highway bonds. These drafts or checks were deposited by the Highway Department with the State Treasurer for collection and credit. On that day I was authentically informed that if these checks or drafts were presented and their payment insisted upon the institution was not in current funds sufficient to meet the same and that the result would apparently have been the closing of the institution. A number of counties have their bonds on deposit with the institution and the closing of it would have resulted in the tying up of something over \$2,000,000.00 of Highway funds which were to be devoted to the payment of the counties' share of the cost of construction of their highways. The bond and financial situation of the State and of the country is such that, there is now practically no market for these highway bonds though the same are perfectly sound in every respect. I, therefore, wish to call your attention to the fact that if the method of procedure provided in certain sections of the statutes relating to highway construction are pursued, that is, if counties continue

to draw their drafts or checks upon these escrow depositories, in some instances at least, the depositories will not have current funds on hand sufficient to meet such drafts as they are presented in due course of things and the result will be some institutions will be closed and the whole program of county aid for highway purposes will be upset and seriously interrupted.

In view of the situation which exists, I called a number of county judges and county commissioners of the State, some sixteen or eighteen in number, whose highway funds were in the condition stated, for conference that they might consider the situation, and, if possible devise or suggest some plan or program by which this situation might be remedied. After having duly considered the situation they have requested me, in their behalf, to submit to you, for your consideration and opinion, certain tentative resolutions adopted by them unanimously, which are hereto attached. The representatives of the following counties were present and adopted the resolutions:

Bell, San Jacinto, Tyler, Van Zandt, Pecos, Reagan, Roberts, Andrews, Liberty, Refugio, Colorado, Gaines, Live Oak, Madison, Wheeler, Matagorda, and Concho.

In this connection I call your attention to the circumstance which has developed that in most instances the counties having highway bonds and desiring to provide funds to cover their share of local aid as agreed upon with the Highway Department, sold or transferred the same to the escrowing depository or banking institution and to secure credit for the amount of the bonds at the same time taking security from the bank consisting of a list of municipal securities of various character sufficient, in the opinion of the county authorities, to cover the proceeds of their bonds. These securities, I am informed, are still intact and held by the counties, or have been put up in trust for safe-keeping with responsible institutions. I therefore desire to present for your consideration, the fact that the procedure prescribed in the statute by which the Highway Department is to present to counties from time to time accounts covering the sums advanced by the Highway Department for their account and for remission by the counties of the amount under

existing circumstances is practically inoperative, at least in many instances, and although county bonds have been issued and the same have been sold or disposed of to provide funds covering county aid the funds are not, in fact, available for the counties to draw on to rebate the Highway Department for advances made by it for the account of counties. Therefore, a pressing emergency exists to cover which the counties, as I understand, in their conference this morning, adopted the resolutions which I am transmitting to you. They request me to solicit your opinion, in their behalf, on these resolutions and ask your opinion whether any or all of their proposed plans will prove illegal.

The gentlemen are still in the city but some of them have stated that they must return home very shortly, for which reason and on account of the urgency of their matter, they request as early an opinion as your Department can give.

Sincerely yours,
CONE JOHNSON,
Highway Commissioner.

Memorandum.

January 26, 1922.

Upon invitation of the Highway Commission, through Mr. Johnson, the county judges and representatives of the following counties assembled at the Highway Commission office for the purpose of discussing the matter of the status of their county and local funds for highway purposes:

Andrews, Bell, Colorado, Concho, Gaines, Liberty, Live Oak, Madison, Matagorda, Pecos, Reagan, Refugio, Roberts, San Jacinto, Tyler, Van Zandt and Wheeler.

Thereupon, Mr. Johnson read to them the following statement:

"You have been requested to assemble here today as officials of your respective counties which counties have funds deposited, particularly in a local institution, to cover the county's share of highway construction. The immediate occasion for requesting your presence at this time is that certain checks, drawn on the local institution by certain counties and forwarded to the Highway Department in payment of sums advanced by the Department in carrying out highway work in these counties, could not, as I learned from of-

ficial sources, be paid in cash when presented. And that to present the same and insist on their payment at that time would, in the course of events, have resulted no doubt in closing the institution and thereby bringing on a more serious situation than that which now exists. Consequently, on behalf of the Commission, I requested the State Treasurer to whom these checks had been sent, to recall them and hold them temporarily until he could be further advised. I at once, by letter, notified the County Judges of these counties of the situation and the action which had been taken and requested their advice in the matter. These bonds, as well as the funds derived therefrom belong, of course to the respective counties and their disposition and handling is a matter for the county authorities to determine. The Highway Department, of course, has no jurisdiction or authority over this matter although the Highway Department is materially interested in these funds, since they constitute the source from which the Department is to receive local aid as agreed upon by the county and the Department. The Department stands ready to cooperate with you in every way possible to work out some plan to cover the present situation and to do all that it can for the relief of counties; but the ultimate decision which the county will take is, of necessity, up to the County Judges and their Commissioners Courts. I do not wish to cause alarm for which I think there is no occasion now. There are, by estimation, approximately some \$6,000,000.00 of county and road district highway bonds, most of which have been placed with banks and other institutions as escrow depositories. There is now practically no market for these bonds or securities and if the funds are withdrawn from the institutions which are acting as escrow depositories under present financial conditions the result it seems, will necessarily be to place some of these institutions in a condition of real distress. This situation very naturally gives to the Highway Department concern, and I speak for the entire Commission when I say that it stands ready to cooperate in every way legal and possible, to meet the situation or to relieve it. It appears that many of the counties have sold or transferred

their bonds to depository institutions, receiving therefor a certificate of deposit for the purchase price of the bonds and that the counties, at least most of them, have received from the escrow depository certain securities to secure these deposits, which securities, I understand, have been deposited with perfectly responsible institutions to hold in trust or for safekeeping.

"I have now no information which would justify me in intimating that these securities are not adequate; on that question I am of course, expressing no opinion and would not undertake to do so. There is a representative of the Banking Department present (Mr. Wootan) who knows better than we do the details of banking and of these matters, and no doubt has specific information of the banks or institutions with which the Highway Department has business, from time to time, the matter of local aid. He can, and I think will, give you the details of the particular situation which caused me to request you to be here today and we, of course, will be glad to hear any other observations which he may see fit to make; after which you can go into a general informal discussion of the matter and take such action or make such recommendations or suggestions as may occur to you as necessary and proper to meet this situation."

Thereupon Mr. Wootan made a statement to the assembled representatives of the company, stating, amongst other things, that the situation as mentioned by myself with reference to the local institution was substantially correct and that but for the action taken by myself in behalf of the Commission, in recalling the drafts in question and not insisting on their presentation and payment at that time, the consequences would have been as I have stated.

After other remarks the representatives of the counties present organized informally by requesting Judge Casebier, of Pecos County, to act as their presiding officer, and thereupon entered into a full discussion of the situation, and what could be done; the result was the adoption by them of the following resolutions, which was submitted to Mr. Johnson:

1. Be It Resolved that it is the

consensus of opinion of the county officials assembled that the State Highway Department, after examination of the same, be requested to accept bonds or other obligations of any political subdivision of the State of Texas which are not in default, including those which are now held as pledges to secure funds presently to be used in road construction under the State Highway Department, in lieu of cash when and as highway bills are presented to the county for payment, and further be it resolved;

2. That pending the granting of such request or the working out of some other method through which counties having deposits based on county or road bonds or other municipal securities to secure county deposit can receive cash for their deposits that the Highway Department be requested either not to bill the counties involved for their part of roads being constructed under the supervision of the Highway Department until the funds are actually available or if it is found legally necessary to bill as the work progresses, that the Highway Department be requested to impound and hold checks against depositories if in the opinion of the county or the State Highway Department such checks cannot be cashed without imperiling the ultimate safety and payment of the funds of the county or counties involved, and further be it resolved;

3. If in the opinion of the Highway Commission it is desirable to escrow bonds or other securities now forming the basis of pledge for county deposits with the Department for safekeeping pending the liquidation of county indebtedness to the Department, that the same be accomplished through action of the Department and through consent and cooperation of the individual counties involved.

As a representative of the Highway Commission I was careful to say to them that I could not and would not undertake to say what action the Highway Commission would take with reference to their proposal or plan; that matter would have to be submitted to the entire Commission, and that I, of course, did not know what could be or would be done. I suggested, however, that before proceeding to try to work out any of these plans, it

would probably be well for the representatives of the counties to submit the same to the Attorney General's Department for an opinion as to the legality and feasibility of the same, or any one of the proposals. Thereupon the representatives of the county officials called upon the Attorney General to solicit his opinion with reference to the proposed plans contained in the resolution. A representative of the Attorney General's Department, Judge Koons, appeared before the meeting and discussed the same briefly and then asked that the same be presented formally to the Department for its opinion and requested that Mr. Johnson write the Department a letter setting forth the resolution and opinion desired with such facts as might be deemed appropriate. Thereupon, Mr. Johnson wrote the Attorney General the following letter:

Questions by Mr. Hooper.

Q. Now, Judge Gaines, you have read the two letters from Mr. Johnson and you have heard the reading of the minutes of the meeting with the representatives of the counties. Does that represent the facts which were presented to you in connection with the opinion which you and Mr. Koons wrote?

A. Yes, sir.

Q. What was the date of the opinion that you wrote in reply to the two letters of January 14th and January 26th?

Q. We replied to those communications after an investigation of the facts, as best we could, in order to have a detailed statement of it. We replied to it on January 27th, 1932 in a letter addressed to the Honorable Cone Johnson.

Q. You have a copy of the opinion which was prepared, dated January 27th?

A. Yes, sir.

Q. I believe, Judge Gaines, I will ask you to read that opinion.

(Letters.)

"Attorney General's Exhibit No. 4."
Offices of the Attorney General
Austin.

January 27, 1932.

Honorable Cone Johnson
State Highway Commissioner
State Highway Department
Austin, Texas

Dear Sir:—

Your letter of January twenty-

sixth, addressed to the Attorney General, has been referred to the writer for reply.

In connection with your inquiry we understand the facts to be that the Commissioners Courts of certain counties in this State have entered into contracts or agreements with the State Highway Department and have appropriated certain amounts of money out of the available road funds of the county or political subdivision or defined districts thereof as "county aid" for the purpose of the construction of macadamized, graveled or paved roads and turnpikes therein. The Commissioners Courts having deposited the amount of "county aid" in escrow fund in a designated depository, which deposits or escrow funds secured by the bonds of the depository by its pledging certain municipal securities, such escrow funds to be used for the sole purpose of reimbursing the State Highway Fund for the county or political subdivision or defined district's proportionate amount of the total cost of the improvements as agreed upon, to be paid the State Highway Department by warrants issued by the County Clerk, countersigned by the County Judge and approved by the Commissioners Courts upon accounts of the State Highway Department, certified by the State Highway Engineer, in partial payments as the work progressed.

We further understand that certain special depositories are unable to pay drafts or checks drawn by certain counties against such deposits for the county's share of the road improvements contracted for, and that such county's only recourse is to require such pledged securities in lieu of such funds, and by reason of the present bond and financial condition of the country generally, there is now practically no market for these bonds, though the same are inherently sound, and that consequently such counties would be unable to negotiate the sale of such securities except at a great sacrifice.

You ask this Department to advise you if there is any provision or principle of law inhibiting the Highway Department from pursuing any or all of the following proposed plans:

"(1) Can the State Highway De-

partment accept bonds or other obligations of any political subdivision of the State which are not in default, including those which are now held as pledges to secure funds presently to be used in road construction under the State Highway Department in lieu of cash when and as highway bills are presented to the county for payment?

"(2) That until such pledged securities can be sold, can the State Highway Department proceed with the work and not demand or 'bill' the counties involved for their part of the roads being constructed?

"(3) Can the State Highway Department proceed with such work and demand of such counties their checks as such work progresses, and impound and hold such checks against said county depositories if in the opinion of the county or the State Highway Department such checks cannot be cashed without imperiling the ultimate safety and payment of the funds of the county or counties involved?

"(4) Can the Highway Department proceed with such work upon the county or counties placing in escrow bonds or other securities now forming the basis of pledges for county deposits for safekeeping, pending the liquidation of county indebtedness to the Department?"

We have separated the second question into two parts because two methods are set out therein.

Replying to the foregoing, I have to say that it is first necessary to inquire if the statutes confer authority upon either the Commissioners Court or the Highway Department to pursue the course outlined above. Commissioners Courts are creatures of the Constitution and have only such powers as are expressly and by necessary implication given them by the Constitution and statutes. *Baldwin v. Travis County*, 88 S. W. 484, and authorities there cited. This same rule would apply also to the State Highway Department.

Article 752j, Revised Civil Statutes of 1925, as amended by Acts of the 39th Legislature, First Called Session, Chapter 18, Section 12, reads as follows:

"After approval and registration as provided by law relative to other bonds, such bonds shall continue in the custody and control of the com-

missioners court of the county in which they were issued, and shall be by said court sold to the highest and best bidder for cash, either in whole or in parcels, at not less than their par value, and the purchase money therefor shall be placed in the county treasury of such county to the credit of the available road fund of such county, or of such political subdivision or road district of such county, as the case may be."

It has been held that there is no objection to a contractor's bidding for the bonds and the work, but if a contractor bids for the work an amount in excess of what the work could be procured to be done for cash to recoup the contractor for a portion of the amount which he agrees to pay for the bonds, such bids should not be accepted because this method of selling the bonds is a clear evasion of the statute which forbids their sale for less than par and accrued interest. See *Wilson v. Hebert*, 174 S. W. 861; *Ogg et al. v. Dies et al.*, 176 S. W. 638. In the case of *Stephens County v. H. C. Burt & Co.*, 19 S. W. (2d) 951, the court held that Article 708, Revised Civil Statutes of 1925, relating to counties and providing that bonds shall never be sold at less than their par value and accrued interest, exclusive of commissions, was mandatory.

Article 6674f, Revised Civil Statutes of 1925, reads as follows:

"The total cost of all improvement of State Highway made with county aid shall be paid out of the State Highway Fund. The county or road district in which any such improvement is made shall reimburse said fund in such amounts, and in such proportion of the total cost of improvement, as may be agreed upon between the State Highway Department, and the commissioners court of the county."

Article 6674g, Revised Civil Statutes of 1925, reads as follows:

"Said county aid shall be paid to the State Highway Department for deposit in the State Treasury to the credit of the State Highway Fund in partial payments as the improvement progresses. It shall be paid by warrants issued by the county clerk and countersigned by the county judge and approved by the commissioners court upon accounts of the State Highway Department

certified by the State Highway Engineer. Said accounts rendered by the State Highway Department shall be based on certified accounts of contractors, laborers and materialmen previously paid by the department, copies of which accounts shall be filed in the county with the accounts rendered by the Department; the purpose of issuing said county warrants being to reimburse or partially reimburse the State Highway Fund for moneys paid out of same in improving the section or sections of highway for which county aid has been granted."

It is a well recognized principle of law that where the Legislature prescribes a definite, certain method of procedure for a city or county, all other methods are by implication of law excluded. *Hill County v. Bryant and Huffman*, 264 S. W. 523; *Foster v. City of Waco*, (Tex. Sup.) 255 S. W. 1104.

The Legislature having prescribed definite and certain methods for the sale and disposition of road bonds, and having prescribed definite and certain methods of reimbursing the Highway Fund for the counties' portion of the cost of construction of such highways, it is the opinion of the writer that all other methods are by implication of law excluded.

You are, therefore, advised that in our opinion there is no statutory authority for the Highway Department to pursue any of the courses set out in questions Nos. 1, 2 and 4, and we believe such courses are inhibited by law.

This leaves only the method set out in question 3 for consideration.

As the Highway Department is authorized by law to make contracts with counties for the construction of roads, the counties to pay such part of the cost of construction as may be agreed upon and as there is no direct statutory provision as to when the State Highway Department shall cash the warrants issued by the county in payment of its pro rata share of such construction, we cannot find any provision of the statutes that would expressly prohibit the State Highway Department from pursuing the course outlined in your question No. 3. However, in this connection we do not deem it inappropriate to suggest that the agreement entered into between a particular county and its depository,

whereby bonds have been placed by the depository with a bank acting as trustee for both the depository and the county, be modified in such a way that the pledged bonds cannot be sold, exchanged or otherwise disposed of without the consent of the State Highway Department. This in order to fully protect the interests of the State Highway Department in said pledged securities.

You are further advised that in our opinion it would not be legal for a county, road district, or political subdivision thereof to pledge its own bonds, warrants or other evidence of indebtedness to secure the Highway Department in the payment of its part of the cost of such road improvements.

Very truly yours,

WALTER A. KOONS,
Assistant Attorney General.
SCOTT GAINES,
Assistant Attorney General.

Q. Judge Gaines, while I think your opinion speaks for itself, I wish you would state just what the effect of your first opinion was with respect to the course which the Highway Department proposed to pursue with respect to those securities and the question involved?

A. I don't know that I understand the question.

Q. Just state in substance the effect of your opinion you have just read.

A. Well, the effect of the opinion as I understand it and understood it was to—we had the impression at the time we passed on it from certain facts in our possession, certain counties had voted bonds, but they had not had a bona fide issue or sale of said bonds, and they sought to pledge the securities with the Highway Department to pay for the county's portion of the work to be done.

Q. Their own bonds or the bonds of other counties?

A. Their own bonds.

Q. Was that the assumption you had in mind, and the state of facts you had in mind when you reached the opinion of January 27th?

A. Yes, sir.

Q. Then the effect of your opinion was that they could not pledge their own bonds, that a county could not pledge its own bonds?

A. Its own bonds that had been voted, authorized by the vote of the people, and had been printed and

signed and approved by the Attorney General, and not yet sold in a bona fide sale.

Q. Now, after the opinion of January 27th, I will ask you to state to the Committee whether or not you received any request for an opinion which stated a different state of facts and which was considered by you in another opinion?

A. Yes, sir.

Q. Did you or not receive a letter which was signed by County Judge O. L. Sims of Concho County, Texas?

A. Yes, sir.

Q. He was one of the representatives that attended the conference of county judges with the Highway Department?

A. Yes, sir.

Q. That request for an opinion for him was presented to the Attorney General's Department?

A. Yes, sir.

Q. With the request that his question be answered and the answer be directed to the Highway Department?

A. Yes, sir.

Q. Do you have a copy of the request for that information?

A. Yes, sir.

Q. What is the date of that request?

A. January 27th, 1932.

Q. I assume your opinion of January 27th, was delivered formally to the Highway Department?

A. Yes, sir.

Q. Now, will you read that request for information?

A. Yes.

(The witness read in evidence the letter above referred to.)

Q. You have a photostatic copy of that letter?

A. Yes, sir.

Mr. Hooper: Before I offer this, I want to offer a photostatic copy of the opinion of the Attorney General, dated January 27th, addressed to Honorable Cone Johnson. This will be Attorney General's Exhibit No. 4. Then I offer as Attorney General's Exhibit No. 5, the request for information signed by County Judge O. L. Sims, County Judge of Concho County.

Austin, Texas, January 27, 1932.

Hon. James V. Allred,
Attorney General,
Austin, Texas.

Dear Allred: In relation to Question 4 of the opinion of January 27th from your Department to the State

Highway Commission, I shall appreciate you amplifying an item that is a little obscure to some county judges who are interested. The question is, "Can the Highway Department proceed with such work upon the county or counties placing in escrow bonds, or other securities, now forming the basis of pledges for county deposits for safekeeping, pending the liquidation of county indebtedness to the Department?"

Does this part of the opinion prohibit counties from pledging to the Highway Department the deposits that they may have with banks, or other institutions, as result of the proceeds of their bond sales, as well as such securities as the counties may have taken from such depositories to secure their deposits, either with or without the delivery of such securities to the Highway Department as a part of such pledge—this for the purpose of expediting highway construction?

Thanking you, I am

Yours very truly,

(Signed) O. L. SIMS,

County Judge, Concho County, Texas.

Q. (By Mr. Hooper) What is the difference in the question presented by the letter of Judge Sims and the question that had been presented in the letter of Mr. Johnson?

A. The difference is this. As I have explained, we had the impression at first that certain counties had voted bonds but who had not sold them, except to pledge those bonds with the Highway Department for that county's portion of the cost under certain contracts. Now, addition to that presented in Judge Sims' letter, upon additional investigation, we found the facts to be that a certain bank in Austin, being the Security Trust Company, was the depository under escrow agreement with something like twenty-one or twenty-two counties, as we understood it, under agreement between the counties and the Highway Department for road construction. That institution was unable to realize on its assets in order to meet cash withdrawals. That is when the warrants were presented to the bank, the bank could not pay them. The bank had up depository pledge bond security to cover those deposits.

Senator Pace: Mr. President, there are two members of the Tyler bar here who have come down here to act as personal representatives of

Mr. Cone Johnson, and I want to move that Mr. Roy Butler and Mr. Troy Smith, attorneys from Tyler, as the personal representatives of Mr. Cone Johnson be granted the privileges of the floor, as personal representatives of Mr. Johnson, along with the others.

(The above motion was duly seconded, put and carried.)

The Chair: The reporter will enter these gentlemen as counsel for Mr. Johnson.

Q. (By Mr. Hooper) Proceed with your explanation of that transaction and of the situation you understood to exist when you wrote your supplemental opinion.

A. We understood the facts to be that the Security Bank & Trust Company at Austin, acting as officially designated county depository for something like twenty or twenty-one counties of this State, who had contracts with the State Highway Department for highway construction in their respective counties, the counties to furnish under said contracts certain amounts of what is known as county aid for said construction, that the bank had pledged these statutory bonds up with the counties as required by the statute, known as a pledge security bond. That is, that certain municipal securities are pledged by the depository bank with the county, with a trustee bank to secure the county funds held in escrow to defray the expenses of the county's portion of the highway construction. This bank by reason of the financial conditions of the country, and the bond market generally at that time, was unable to meet warrants drawn against these funds, for the reason that it was unable to proceed with the realization of its assets in order to pay these withdrawals. Therefore, the county had the option of defaulting on its pledged security bond, it could not get payment on its warrants, and they wanted to know whether or not the Highway Department could continue with the road construction in these respective counties, if the county issued the warrant, and held the warrants, and if the county could enter into the agreement with the Highway Department to take over these pledged securities and put them in escrow in the trustee bank. That was our understanding at the time we passed on this agreement.

Q. Now, did you also understand

that at the time this question was presented to you, the twenty-one or twenty-two counties involved, the Highway Department had entered into contract for road construction with contractors, or had entered into projects agreement with the various counties?

A. Yes, sir. Those contracts had already been let in many instances, in fact all the instances. The agreements had been made between the counties and the Highway Department, the counties to furnish county aid, the Highway Department to put up the State aid and the Federal aid for certain road construction in these respective counties, and in many instances, if not in practically all of them, contracts had already been let by the Highway Department with contractors and the work was in process of construction in practically all the counties, as we understood it, and in some instances it was nigh onto completion.

Q. I will ask you if you further understood that all of the counties which were involved by the opinions which you wrote had on deposit the money in the Security Trust Company, and in other banks over the State?

A. Yes, sir.

Q. Which were in the same condition as that bank was in?

A. Yes, sir.

Q. That is, they didn't have the funds available to take the warrants drawn upon them by the counties?

A. Yes, sir.

Q. In view of those facts you wrote an opinion on January 29th?

A. Yes, sir.

Q. 1932?

A. Yes, sir.

Q. Addressed to the Hon. Cone Johnson?

A. Yes, sir.

Q. I will ask you now to read that opinion.

A. I will.

(Thereupon, the witness read the opinion referred to.)

Mr. Hooper: We offer in evidence at this time a photostatic copy of the opinion of the Attorney General dated January 29, 1932, signed by Walter A. Koons, and Scott Gaines, Assistant Attorneys General.

Offices of the Attorney General
Austin.

January 29, 1932.

Honorable Cone Johnson,
State Highway Commissioner,
State Highway Department,
Austin, Texas.

Dear Sir: Supplementing our letter of January 27th, in which we replied to your inquiry of the 26th, we have to advise that we have reconsidered Question No. 4 submitted by you, which question is as follows:

"(4) Can the Highway Department proceed with such work upon the county or counties placing in escrow bonds or other securities now forming the basis of pledges for county deposits for safekeeping pending the liquidation of county indebtedness to the Department?"

The matter of settlements between the counties involved and their depositories are strictly between such counties and the depositories. The counties, of course, are presumed to make such settlements as are most advantageous to themselves. We will assume that the counties and their depositories have reached or will reach an agreement which is satisfactory to all parties concerned, and that the counties have in their possession the securities which were pledged to secure their deposits.

Under such a statement of facts we cannot find any provisions in the Statutes that would expressly prohibit the Highway Department and the counties from pursuing the course set forth in your question No. 4, and we believe that it would be legal for the State Highway Department and the county or counties involved to enter into contracts whereby such securities would be pledged to pay the counties' share of road improvements when such bonds or securities could be sold at a price considered advantageous to all concerned. This, of course, would only apply to such cases as are now pending, and in which contracts for road improvement have already been executed.

You are further advised that in our opinion it would not be legal for a county, road district or other political subdivision thereof to pledge its own bonds, warrants or other evidences of indebtedness to secure the Highway Department in

the payment of its part of the construction of such road improvements.

Very truly yours,

(Signed) WALTER A. KOONS,
Assistant Attorney General.

(Signed) SCOTT GAINES,
Assistant Attorney General.

Q. Now, Mr. Gaines, I notice in the opinion that you restricted the application of this policy to those counties in which the situation you have described existed at the time the question was passed upon by the Department?

A. Yes, sir.

Q. Now, explain to the Committee why you did that?

A. Well, the restriction was made to this effect that as the controlling statutes are with reference to this character of contract between the counties, the Highway Department, and the depository, that the State in most of these instances of these counties involved had already let the contract with the contractor for the road improvement and construction, and the contractor contracted a loan with the State Highway Department for the State.

Q. Do not the statutes so provide?

A. Yes, sir.

Q. It makes it the duty of the Highway Department to contract in the name of the State?

A. In the name of the State of Texas.

Q. Who is primarily liable upon that contract?

A. The State, through the State Highway Department—it is payable out of the State Highway funds. The county is not a party to the letting of a contract with the contractor.

Q. Now, the county, in respect to the contract which is let by the Highway Department, stands in identically the same position as the Federal government does, does it not?

A. Yes, sir.

Q. Neither the county nor the Federal government, under our statutes, are a party to the contracts which are let by the Highway Department for the construction of State highways?

A. That is right.

Q. Does the Highway Department have exclusive control and management of the construction of State highways?

A. Yes, sir.

Q. I believe you pointed out in

your opinion of January 27th the statutory procedure with reference to the payment of estimates by the counties where county aid has been agreed to?

A. Yes, sir.

Q. Do the statutes specifically provide how that shall be done?

A. Yes, sir.

Q. Explain that to the Committee.

A. The State Highway Department first enters into an agreement with the county, agreeing between them and the county as to the county's portion and the State's portion for any particular construction. The county puts up its funds in escrow to secure the State highway for its portion, under an agreement with the State Highway Department for that purpose. The Department then lets the contract and enters into an agreement with the contractor for the particular construction, in the name of the State, and so signs the agreement. The Department is bound under the contract for the whole contract price. It pays the contractor as the work is completed, directly out of the highway funds. It bills the respective counties on estimates furnished by the State Highway Engineer as the work progresses. The county reimburses the Highway Department by warrants drawn by the county clerk, countersigned by the county clerk, and approved by the county judge, which money is remitted to the Highway Department and in turn placed back into the State highway funds for the county's portion of the work.

Q. Then, as I understand the facts with respect to the counties involved in these transactions, the liability of the Highway Department and of the appropriation of the Highway Department had already been established for the full amount involved in all the contracts which were subsequently carried out?

A. Yes, sir.

Q. Now, how are the estimates which are presented by the State Highway Engineer paid by the county?

A. They are paid by county warrants, drawn against the escrow fund.

Q. In this instance would it or not be paid by a warrant drawn upon the Security Trust Company of Austin?

A. Yes, sir.

Q. Does, or not, the statute re-

quire that that procedure shall be followed in the payment of estimates by the counties?

A. Yes, sir. It is statutory.

Q. Is that a mandatory provision of the statute?

A. Yes, sir.

Q. Is there any other way a county could make those payments?

A. Yes, sir.

Q. What?

A. There is a statutory method. In many instances—the county sometimes does not follow the procedure. They might possibly have a check issued by the county treasurer. That would be merely an irregularity. The directions of the statute possibly are not mandatory, —possibly directory.

Q. Under the statutes now in existence, and then in existence, did the State Highway Department have authority to construct State highways without county aid?

A. Yes, sir.

Q. Could they have done so in those instances, had they so desired?

A. Yes, sir, it was in their judgment and in their discretion. In the exercise of their judgment and discretion.

Q. Did the State Highway Department, if you know, adopt the plan of procedure which you advised them they could adopt?

A. Yes, sir.

Q. Did you consult with them subsequently with respect to an agreement which might be entered into between them and the various counties involved?

A. Yes, sir.

Q. Have you a copy of that agreement?

A. I believe I have. Yes, sir, I have it.

Q. Now, the effect of that pledge agreement is that the certificate of deposit which is held by the various counties against the Security Trust Company is transferred and pledged to the State Highway Department?

A. Yes, sir.

Q. And in addition to that the municipal bonds, county bonds, city bonds, and bonds of various characters were pledged by the various counties to secure the payment of that deposit?

A. Yes, sir.

Q. Now, was that agreement entered into between the Highway De-

partment and the various counties involved?

A. Yes, sir. Well, the various counties, as I understand it, under this agreement, took possession of these pledged securities.

Q. And then turned them over?

A. Took possession of them from the depository bank in view of the fact it had ceased to meet its payments, and the only thing they could do was declare on this pledged securities and take over the pledged securities, and then in turn they entered into an agreement with the Highway Department pledging these securities received from the banks to secure the Highway Department on such funds as it might advance on the particular construction. That is the effect of the agreement.

Q. I will ask you, Judge Gaines, if the facts as represented to you and as you understood them, are that the Highway Department in respect to the transactions which were involved in the opinion which you wrote have subsequently complied with the opinion of the Department as prepared by you and Judge Gaines, I mean Mr. Koons?

A. Yes, sir.

Q. Under the statute who has authority to select county depositories?

A. Only the County Commissioners Court of the respective counties has the authority to select the depositories for county funds.

Q. In these instances only the counties involved have authority to select the depository?

A. Yes, sir.

Q. Are there any statutes which prescribe the kind and character of securities which shall be pledged as security for that deposit?

A. Yes.

Q. Does the State Highway Department have any authority to designate the depositories for the various counties in this State which might be used for the construction of roads under contract?

A. No, sir, that is a matter wholly within the jurisdiction of the Commissioners Court of the county.

Q. Does the State Highway Department have any authority under the statutes to pass upon the character of security which the counties might require as security for their deposits?

A. No, that's a matter which is

left up to the Commissioners Court in the exercise of sound business judgment,—the discretion of the Commissioners Court examining these securities, form of bonds, substance thereof, the value of the securities to be passed upon by the Commissioners Court and approved by them as the governing body of the county, whether or not it is sufficient to secure their deposit in the depository. The statutes describe the character of securities. Of course, the question of whether the value of the security is there—that's the question to be passed upon in the good sound business judgment of those in whom the authority is left to pass on the question.

Q. In your consideration now of the propositions which were submitted to you by the Highway Department, do you know of any other course which the Highway Department might have pursued under the statutes which would have protected it against loss in the disposition or rather, in the funds which it was expending in the construction of these highways?

A. I know of none.

Q. If it had not adopted the course which you advised what other courses were open to it?

A. I know of no other course. Probably demand of the counties that they go down and have the depository raise the cash and if it was unable to pay cash on the warrants then the only course would be to demand its pledged securities.

Q. Could the Highway Department have demanded that at the time the warrants were issued?

A. Probably could have.

Q. What would have been the result?

A. Of course, the counties could have declared upon their pledged bonds, taken the bonds out and if the depository was willing to do so they could have taken them out and sold them, but there was no bond market at that time when the situation arose, and the conditions of the bond market were practically the same as far as my experience goes, as it is now.

Q. Then if the Highway Department made demands upon counties for payments on warrants, the counties involved would have sustained a great loss due to the condition of the bond market?

A. Yes, sir, and so would the Highway Department.

Q. Did you take that fact into consideration in advising the Commission?

A. That was the main question.

Q. Now, could the Highway Department make demand upon the bank for the cashing of its warrants?

A. Yes, sir, and I presume that it did, that is, they could have made demand upon them.

Q. Is there any difference in a warrant issued under these statutes and a check or draft which might have been issued by a county?

A. Yes, sir, considerable difference.

Q. Explain that difference.

A. A warrant required by statute to be issued by a county in payment of work or things of that character and is known as a non-negotiable—simply an evidence of debt upon the part of the county that they owe the State Highway Department so much payable out of a certain definite fund if they have no cash to pay them.

Q. Now, Judge Gaines, could the Highway Department at that time, in view of the contract it had executed with contractors over the State and in view of the fact that highways involved were in course of construction,—could it have suspended the execution of those contracts and stopped the construction of the highways?

A. No, sir.

Q. Why could it not?

A. Because the Highway Department was primarily bound to the contractor for the payment on the work as it progressed and the contractor looked to the State Highway Department of the State of Texas for payment on his contract under the State Highway Department.

Q. Under the pledge agreement which was entered into between the Highway Department and the counties, does the Highway Department have complete control over the securities which were pledged by the county, that is, to the extent necessary to protect it?

A. The later agreement?

Q. Yes?

A. Yes, sir.

Q. Does the Highway Department or State funds stand any chance to lose any money upon the

agreement which was entered into between them and the counties?

A. As I can see it the Highway Department is in the same position now as it was then. In other words, in better position, because under the supplemental agreement those identical securities were taken over by the county and replaced to a trustee by the county which was carried to pay the depository bank. Now, those funds are in escrow, at least, those securities are in escrow, held by the trustee between the Highway Department and the county, to be disposed of at the most advantageous price when there is a market for such securities.

Q. Just one more question, Judge, and then I will be through. Are you familiar with the bond assumption act which has been adopted by the Legislature since that time?

A. Yes.

Q. If the Highway Department had demanded the security, the payments of its warrants, I will ask you to state whether or not under existing statutes it would be obligated to those various counties for the sum of money represented by the checks which now are impounded?

A. Yes, sir, to the extent that the Act covers the securities according to their values to the extent covered by the assumption act.

Mr. Hooper: I believe that's all, Judge Gaines.

The Chair: What is the order of the further examination of this witness?

Senator Woodward: I would like to interrogate the witness just for a few minutes.

The Chair: All right, proceed.

Questions by Senator Woodward.

Q. Mr. Gaines, I believe you referred to and read into the record a letter dated January 26th, 1932, signed by Cone Johnson, one of the Highway Commissioners?

A. Yes, sir.

Q. I believe you have read into the record the reply, or the opinion of the Attorney General's Department, which was prepared by yourself and Judge Koons, which was in reply to that letter of January 26th?

A. Yes, sir.

Q. And I believe you have read into the record a communication from Judge Sims, dated January 27, 1932?

A. Yes, sir.

Q. And also a communication from Mr. Johnson dated January 27, 1932?

A. The 26th, I believe.

Q. Did you receive two communications from Mr. Johnson?

A. Yes, sir.

Q. Both of those on the same date?

A. No, sir. One was on the 14th and one on the 26th.

Q. That is my error. The first one was January 14th?

A. Yes, sir.

Q. And then a subsequent letter from Mr. Johnson dated January 26th?

A. Yes, sir.

Q. And you have read into the record the reply of the Attorney General's Department to each of those communications?

A. Yes, sir.

Q. Was the reply to the second communication also a reply to the communication from Judge Sims?

A. Yes, sir.

Q. Advising Mr. Johnson, or the Highway Commission with reference to the same matters about which Mr. Sims had sought an opinion?

A. Yes, sir.

Q. In the Governor's message, Mr. Gaines, reference is made to the opinion of the Attorney General dated January 26th. Is that the opinion which was first given by the Department in reply to the first letter written by Mr. Johnson?

A. The first reply was on January 27th, the first opinion of the Department.

Q. Now, is that the opinion wherein you advise the Department that the Highway Commission could not accept bonds issued by the counties; that is, those which had not been sold?

A. Yes, sir, that was the substance of that opinion.

Q. The substance of that opinion?

A. Yes, sir.

Q. Now, is that the opinion which is set out in the Governor's message, and forwarded to the Senate on February 15th?

A. I don't—

Q. I will identify it by reading this part of it. Exhibit C appears as part of the Governor's message, wherein she states, "Under date of January 26, 1932, Hon. Cone Johnson, State Highway Commissioner, made inquiries of the Attorney General as follows:" Now, is the first letter from Mr. Johnson that one?

A. Yes, sir.

Q. Is that the first or second letter?

A. What date was it?

Q. "Under date of January 26, 1932, Hon. Cone Johnson, State Highway Commissioner, made inquiry of the Attorney General as follows."

A. I believe that is the subsequent communication.

Q. That was the second communication?

A. Yes, sir.

Q. Now, in reply to the second communication from Mr. Johnson, had you discovered that the plan contemplated was not the Highway Commission accepting the bonds of the counties, but accepting the bonds of other municipalities, which had been pledged to the county to secure their deposits in their own depository?

A. Yes, sir. That brought about the reconsideration of the matter in the second opinion.

Q. Then am I correct in gathering from your testimony that you advised the Highway Department that they could lawfully accept the securities which had been pledged to the counties, and which had been given to the counties by their depository to secure their own deposit?

A. That it could place these securities up in an escrow agreement between the county and the Highway Department to secure the aid, or whatever aid there was, payable out of the escrow fund, to be due from the county to the Highway Department.

Q. In other words, the difference between the two was that you advised the Highway Department that they did not have the right, under the law, as you understood it, to accept the bonds of the counties, unsold bonds, as security for the indebtedness which the county might owe to the Highway Commission arising out of the road construction?

A. Yes, sir, that is true.

Q. But you did tell them they had the right to enter into an agreement with the county, whereby the securities or the bonds of other counties or other municipalities, which had been pledged to the county to secure their deposit, and that they could enter into the escrow agreement whereby the Highway Commission would look to those for further security for the indebtedness?

A. That is, under the circumstances of the case.

Q. As related to what?

A. As related to the particular transaction under investigation at that time.

Q. Now, then, Mr. Gaines, have you any information, or within your knowledge did the Highway Commission violate the opinion as given by the Attorney General's Department in the letter which has been read into the record of January 29, 1932?

A. So far as my investigation has gone they have followed the opinion.

Senator Woodward: That is all I care to ask him.

Questions by Senator Martin.

Q. There are some few things I don't thoroughly understand; I did not get them clear as you went along, and I would like to clear them up in my own mind. You mentioned a moment ago something about a county warrant being a non-negotiable instrument. Do the counties at this time have a right to issue county warrants for road construction in Texas?

A. Well, what character of road construction, county lateral roads, or State highways?

Q. State highways.

A. No, sir, not at the present time, except for the purpose of purchasing right-of-way for State highways, under the bond assumption Act.

Q. Then the checks that would be given by the county upon the estimates furnished by the Highway Department would not be a county warrant, but would merely be a check to the Highway Department?

A. It would be a warrant or check. These checks, or rather warrants that would be issued at this time under these agreements and pre-existing contracts between the county and the Highway Department would certainly be a warrant.

Q. Under pre-existing contracts?

A. Yes, prior to the enactment of the bond assumption law. They would not have now the authority to enter into agreement with the State Highway Department, or anybody else, for the construction of State highways; because that was done away with under the recent Act.

Q. The thing I was getting at was, under the State projects building through a county, if the county does not have authority to issue

new warrants, the only source the county would have to pay its part would be under the sale of the bonds, wouldn't that be right?

A. I don't know as I exactly understand. You ask whether the county now would have authority. I assume you have reference to new agreements?

Q. Well, at any time. I just wanted to get it clear in my own mind.

A. I just don't understand it.

Q. If I understand, the county would have no authority to issue any county warrants for the purpose of constructing any road through the county, now or at any other time prior hereto?

A. I will answer that question. The county would not have now the authority to make contracts with the Highway Department; I mean new contracts, that is, since the effective date of the assumption law to pay any portion of the consideration by the issuance of warrants, bonds or anything else.

Q. Now, prior to the enactment of that statute you mention there, did the county have authority under the statute to issue county warrants in payment of its pro rata part of any project going through the county?

A. Yes, it did.

Q. It did have authority?

A. Yes. Certain types of warrants were authorized under the statute in paying the county's part of the construction.

Q. You don't remember what particular article of the statute that is?

A. No, sir. I have it quoted right here. (The witness read a portion of the statute.)

Q. What article is that, Mr. Gaines?

A. That is Article 6674-G.

Q. All right, now, Mr. Gaines, with reference to those securities, you had stated in your opinion that the Highway Commission could accept county securities. The only securities the county would have would be such security as would be necessarily in the hands of the Commissioners Court to protect it with its county depository?

A. Yes, sir, as provided by the statute.

Q. All right, the Comptroller also passes on that security, does he not, as well as the Commissioners Court?

A. I don't recall just now. It is primarily up to the Commissioners Court. I don't know whether those call for the approval of the Comptroller or not.

Q. The county would have in its depository such funds as interest and sinking fund on bonds outstanding, jury funds, and such ad valorem taxes as might be retained there before remitting to the State; that is the funds the county would be secured to receive?

A. I presume you have reference to a general county depository bond. They don't rely upon the bond of the depository, but they require separate and distinct bonds or obligations for that purpose.

Q. In other words, other bonds in addition to the ordinary county bonds?

A. Yes, sir.

Q. That is where the county has funds?

A. Yes, sir.

Q. If the county has not sold its bonds it would not have any available funds there, would it?

A. No. Well, it depends. It would have available funds, yes, sir.

Q. For road construction?

A. Yes, sir, for its own road construction.

Q. I mean on State road projects?

A. Oh, you have reference to State road projects?

Q. Yes, sir.

A. Well, no. A county can issue its warrants, or could at that time, prior to the enactment of this assumption law, to aid in highway construction. It did do it. Or it had its road and bridge fund available. Which was some times the constitutional fifteen cents, or thirty cents.

Q. The securities that you have reference to the county transferring to the Trust Company here, you don't know whether it was escrow security or securities from the county depository?

A. I know it to be escrow securities.

Q. You know it?

A. Yes, sir.

Q. Did you investigate that in each instance to see if that were true?

A. I only acted upon the facts as given to me.

Q. In other words, the letters

submitted to you stated they were escrow securities?

A. Yes, sir. As far as my investigation went that was true.

Q. When these escrow securities were placed in the Trust Company here and estimates were made on certain projects and the county was billed for its aid by the Highway Department, the holding of the check by the Highway Department would really benefit the Security Trust Company here rather than the county, wouldn't it?

A. I don't know that it would. It would certainly benefit the county, the State Highway Department, and the bank, and the depository as well, under the circumstances of the case at that time.

Q. When the county would place its securities here the Security Trust Company under the agreement would give it credit, wouldn't it?

A. I can't follow you. I want to answer your question if I possibly can. I only desire to understand what you want. Let's understand each other. In this particular case we advised the counties in our letter, the bank being unable to meet the withdrawals and pay cash on these warrants, and the banks, I believe so advised them, there was no use to present the checks.

Q. That is for the county depository?

A. Yes, sir, the Security Trust Company. They informed the parties, all parties—all parties were apprised of the fact it would be useless procedure to bring checks there. In fact, such checks as had been presented were declined, they couldn't pay them. There was nothing left for the counties to do but to declare on these pledged securities, to go back on the bonds that they held.

Q. Was the Security Trust Company here at Austin the county depository for the various counties?

A. Yes, sir.

Q. I see. That is where the difference came in. I was thinking of another bank off somewhere else.

A. No, sir; it was the escrow depository for these projects.

Q. Now then, if that be the case, the Highway Department in holding the checks and not presenting them for payment would be rendering a service to the Security Trust Company rather than the counties, wouldn't it?

A. Well, the counties had been informed the Security Trust Company could not cash these checks and there was nothing left for the county to do but to go down there, as they did do, and declare on these pledged securities and take them into their possession, and say to the Highway Department, "Let's enter into a new understanding about this fund, the bank cannot pay us."

Q. You understood the Security Trust Company did surrender the escrow—

A. (Interrupting) All of them did this, they entered into new agreements with the Highway Department, and these agreements are self-explanatory, and which were O. K.'d by the Security Trust Company as agreeing to the withdrawal and the new arrangement.

Q. Now, in Henderson County, where there was a check given by the county for some sixty thousand dollars which was never presented over there to the county depository—I believe that is covered by this report?

Senator Woodward: If that is a charge which is to be investigated it should be included in the Governor's message. The matter he is inquiring about is a collateral and extraneous matter, wholly disconnected with the matter we are now investigating, and I insist that unless the Governor files that as a charge that it should be postponed until she does do it, and not confuse it with the matter under investigation, to-wit, the matters arising out of the depository, the Security Trust Company.

The Chair: I think there is a general clause there in the resolution that would admit it. I would be inclined to overrule the objection.

Mr. Petsch: Speaking for the Highway Department we want to say we are perfectly willing to go into that transaction, but we make this suggestion—this examination at this time should be confined to the matters at issue. That we settle this matter and then go into the new matter so as to keep from confusing the witness and the parties interested in the examination. We have no objection at all—we welcome a full investigation of the Henderson County transaction.

The Chair: I believe there is a saving clause that will permit that inquiry.

Senator Martin: I am advised that this witness knows nothing at all of that transaction.

Mr. Hooper: I don't know, but I don't think you had anything to do with that, did you?

A. That transpired long before this and I know nothing about it. The only thing I heard of that transaction was yesterday, I believe.

Mr. Hooper: Since that matter came out in the paper?

A. I knew nothing about that—I didn't know the facts.

The Chair: All right, proceed.

Mr. Hooper: I will state this, Mr. Chairman, at this time. Mr. Looney, a former member of my department, handled that transaction from the outset until the time he left the Department about the first of February of last year. He lives in Houston, and if these gentlemen want to go into that matter from the standpoint of my Department I would like to know and I will get him up here tomorrow. If they want him I will bring him up here.

The Chair: Senator Martin will make his request known to you I am sure.

Mr. Hooper: He is not with my Department any more and in order to get at the facts we would have to have him up here.

The Chair: All right, proceed with the examination.

Senator Martin: I don't desire to ask the witness any further questions.

Senator Stone: I would like to ask a question.

The Chair: Proceed.

Q. Judge Gaines, is it your understanding that counties can select a depository that does not have its place of business in that particular county?

A. Yes, sir.

Q. Were they doing that in the case of these twenty-two counties that selected the Security Trust Company of Austin as a depository?

A. Yes, sir; that is my understanding. Under such circumstances they can select on out-of-the-county depository.

Q. What are those circumstances?

A. I don't know, under the facts, whether or not the Security Trust Company was the designated depository of all the funds of these counties, or not. I know for some of them, but whether just a specially

designated depository for the escrow fund—the Highway Department escrow fund, I don't know as to those particular facts.

Q. You don't know whether this was really a special depository or the regular county depository?

A. It would be the county depository to the extent of the special escrow fund, under a special depository agreement.

Q. Who has the selection of that depository for that special escrow fund?

A. I think that would be a matter under the jurisdiction of the Commissioners Court to designate the depository.

Q. I don't believe you would rule that a county could select a county depository that did not have its place of business in that particular county?

A. Under a certain state of facts, I would.

Q. They could have a special escrow fund?

A. Yes, sir.

Q. But they couldn't have a regular general county depository that did not have a place of business in that particular county?

A. Yes, sir; under a certain state of facts. If you want me to, I will explain it.

Q. All right.

A. The statute requires that the county judge advertise for bids for a county depository and give the required notice, which county depository is to be selected at the regular term of the Commissioners Court which meets in February. The statute prescribes the minimum rate of interest that may be accepted by the county. At the regular February term of the court if the Commissioners Court receives no bids for its deposits—it has got to receive a single bid to accept all the county funds, but receiving no certain bid, or if it receives the bid, it may reject all of those bids, within the exercise of its judgment, and if it does it may then enter into, under other statutes so providing, it may then enter into contract with some other bank in the county, or a number of banks in the county, as many as it may desire to make arrangements with, or if it can find no bank in the county that will accept its funds and pay a legitimate rate of interest for them, then it may exercise the discretion of going outside of the county.

Q. Do you know from your knowledge of the twenty-two counties involved whether that condition existed in any one of those twenty-two counties?

A. As to that I couldn't say. I could use my imagination about it. I imagine in some cases it was the depository for the whole fund of the county, but in these cases which we have under investigation it was the depository for that special escrow fund.

Q. In your investigation of the facts did you inquire as to whether the Security Trust Company was the special depository or the regular county depository?

A. We understood it was the designated county depository for these funds.

Q. It would in reality be just a special depository for this particular transaction?

A. That would depend upon the facts which I haven't got. There are twenty-two counties mixed up in this and probably different facts existed in each county's case. The facts make the law and I would have to know the facts in each case in order to pass upon it.

Q. Is there any statute which prescribes in these special escrow depositories,—assuming the majority of them were special escrow depositories,—as to who shall pick out these depositories?

A. I don't know that there is any special statutory provision governing that.

Q. Then it would be left as the subject of agreement between the State Highway Department and the respective county Commissioners Court as to who the depository should be, in the absence of any statute?

A. They are county funds and they remain county funds and they are handled by the Commissioners Court and deposited under the court's direction, and they never become Highway Department Funds. The Highway Department has no control over them except to present its estimate and receive warrants from the counties to be paid out of those particular designated depositories wherever they might be. That is a matter to be taken care of by the particular Commissioners Court.

Q. Well, when these contracts for partial pay are entered into don't they require that the money

should be set aside for that particular account and available to the Highway Department?

A. The statute?

Q. Yes.

A. The statute says, I believe, Senator, that the county shall enter said contract for the construction of highways and agree to pay the amount as can be agreed upon between the Highway Commission and the Commissioners Court of the county, and that the county shall reimburse the Highway Department out of any available funds for that purpose in the method provided by the statutes.

Q. Is there any provision by which the Highway Department will know when they make the contract when they will get the money?

A. Well, under the policy adopted by the Highway Department, and so far as my knowledge goes, and experience in dealing with them they require a special deposit under these contracts with the counties. That apparently is a precautionary measure on the part of the Highway Department to assure the Highway Department that the county will set aside this fund and that it will be available to reimburse the Highway Department. The Highway Department is requiring the counties to provide these funds as set aside will be available to the Highway Department.

Q. On this type of contracts does the Highway Department have any say as to who the depository should be?

A. Well, ordinarily I shouldn't think they would deal with that part of it,—don't think they do.

Q. No statute requires it?

A. No.

Q. It is simply a question that they could or could not as a case might arise between them and the Commissioners Court?

A. Well, the county takes care of the depositing of the funds, but that's largely a matter of policy on the part of the Highway Department. I don't know of any statute that requires a county to put up a particular escrow fund. It says the Highway Department shall be reimbursed out of available road funds of the county for funds advanced by them, but they require the county to put up the money in most instances in cash in a particular escrow fund

secured by a pledged contract, or some character of contract to secure those funds and that they be used for no other purpose.

Q. Are all of the contracts of those twenty-two counties of that nature?

A. Yes, sir.

Q. And do all of them provide for the Security Trust Company as the depository?

A. Yes, sir.

Q. Of some twenty-one or twenty-two counties the Security Trust Company was the depository?

A. Yes, sir.

Q. Did they furnish you any information when these contracts—do they furnish you any information when this contract is entered into?

A. Yes, sir.

Q. They didn't furnish you with information as to how long those contracts had been running?

A. No, sir, we didn't have that knowledge.

Q. Now, this bond assumption Act, do you remember the effective date of that, Judge Gaines?

A. It was the Third Called Session, Senator, I believe. It was an emergency measure and went into effect immediately. It was passed at the Third Called Session of the 42nd Legislature, sometime in September.

Q. About September, 1932?

A. Yes, sir.

Q. That bond assumption Act then took effect after those transactions?

A. Yes, sir, all after that.

Q. Now, what was the law prior to that bond assumption Act with reference to county participation in contracts?

A. Well, they were to furnish such—the county was to furnish what it was able to. That was largely a matter of discretion as to the contract to be entered into between the Highway Department and the county.

Q. All counties should participate?

A. No, sir.

Q. You don't know how it happened that the Security Trust Company was the depository in all of those twenty-one or twenty-two counties?

A. Yes, sir, I have my own idea about it.

Q. Well, if you know, let's have it, if it is admissible?

A. As I stated the Security Trust Company was handling bond items, purchasing and selling bonds, and it was located here in Austin, and its close proximity to the Highway Department, and the county would issue to sell and it would sell them to the Security Trust Company and through their dealings in bonds and handling bonds it got to be the designated depository,—mainly from this fact.

Questions by Senator Parr.

Q. You said the Security Trust Company was the depository for certain banks?

A. Banks?

Q. Yes?

A. Certain accounts.

Q. What did they put in there to be deposited for those accounts,—what did the county put in the Security Trust Company?

A. Well, it sold its bonds.

Q. They sold the bonds and then put the money in there?

A. Well, the bank would issue to them a deposit certificate.

Q. Did what?

A. I understood the bank issued to them a deposit certificate to the amount of the purchase price of the bonds.

Q. Then if they gave them a deposit slip they must have had the money in that bank, isn't that true?

A. Yes, sir.

Q. All right. We will admit that's true. Then if the county gave the Highway Department a check on that bank for that money why wasn't it paid to the Highway Department?

A. Well, I can't answer that, Senator, except for the fact that my investigation showed the bank had insufficient assets to do so. It was in about the same shape as a great number of banks. Those assets at par value were amply sufficient to have taken care of all that if they had been able to negotiate the securities, the assets, but on account of the financial condition of the country found itself with what is termed frozen assets.

Q. Then if the Highway Department took a check down there and they didn't pay it why then didn't they take it back there then?

A. Well, I can't say as to that.

My investigation showed that the county judges that I talked to and the Highway Department,—it was generally understood by them, in fact, they had been told by some of the county judges that they had been informed by the bank that it was insolvent to the extent that it couldn't pay.

Q. Then the Highway Department just kept that check?

A. Yes, sir. They kept the warrants, checks, whatever it might be that was issued to them by the county, and hold them payable out of the escrow.

Q. (Interrupting) We will assume they did. Then if they are in trouble from now back then is the county going to be responsible to anybody for that money, lose that money put in there, or bonds they had around there that will now only bring fifty cents on the dollar?

A. They entered into the supplemental agreement which we have as an exhibit and took the securities and the bank agreed to it, and the county put them up in escrow and said to the Highway Department, here are our securities for the money, here is what we had up for the money and this fund will remain inviolate until the market is so they can be more readily liquidated.

Q. When the Highway Department got the first check it handled in that way, and didn't get the money, why did they take any more checks when they found they couldn't be paid and why did they hold them?

A. Well, it looks to me as if that was the only recourse they had under the circumstances.

Q. The only recourse they had under what circumstances?

A. Reimbursement from the county for State aid. It was either to handle it in that way or insist upon a sale of the bonds.

Q. That isn't the question I asked you. If you went down to a bank and wanted a dollar and he says I can't give it to you, would you go back again? No. When they went down there with this check to get it cashed and the bank said I can't take it, haven't got the money, why did they take from the counties more checks on that bank and go on down the road?

A. Well, I don't know as to that. That is a question of policy. As I stated before, the county if they followed out the statute would have

issued a warrant payable out of this escrow fund wherever it might be, which escrow fund after the supplemental agreement was represented by the agreement and were placed in escrow out of which the Highway Department was to be reimbursed whatever time it took based on that assumption as the work progressed.

A. I don't know; they might have sent a check payable on the Security Trust Company and might have a plain county warrant to show the indebtedness.

Q. If you and I give a check on a bank down here and we don't have sufficient funds down there they write on it, "Not sufficient funds." Do you think that bank would continue taking our checks, just holding them, just insufficient, not sufficient and go along doing business that way?

A. I have known of many instances.

Questions by Senator Martin.

Q. Right there in connection with that, Mr. Gaines, and my mind works slow and pretty thick, but if I understand the matter, these counties had the collateral up here with the Security Trust Company. Is it still holding that security?

A. No, my understanding is, in fact, the agreement provides that it shall be given to a trustee bank. I don't know which bank it is, but it isn't the Security Trust Company.

Q. The trustee bank is still holding that and the counties are issuing checks on the Security Trust Company?

A. No, as I understand the matter, I don't know, but they are issuing to the Highway Department warrants as prescribed by statute. A warrant issued by a county is simply an evidence of a debt owed to somebody for doing some work—the county hiring a team to work and at the next session of the court present a claim to be approved by the auditor. The Commissioners Court ordered and approved it, and then the county issued a warrant countersigned by the county clerk, approved by the county auditor and you take your warrant and go to the county treasurer's office and register it. Now, when you get paid on the warrant will depend entirely on when the county is in funds out of which to pay you that warrant.

Q. The securities which were up

with the Security Trust Company here, when the pledged agreement was entered into were taken away from the Security Trust Company and placed with some other bank—do you know that?

A. That's for my investigation.

Q. And that was so at the time you gave this opinion here?

A. Yes, sir.

A. My investigation shows none of it is held by them. All of the agreements I have seen down there between the Highway Department and the bank provided for the placing of the securities with an impartial trustee to be negotiated when they can be sold at a fair price.

Q. If ever?

A. Yes.

Q. If they can never be converted into cash then the Highway Department loses it?

A. Inherently all securities are sound. They meet the statutory requirements.

Q. Your opinion is based on the fact that they were sound, and you would not have given it unless you thought so?

A. I read the list of securities set out in the Governor's bill of particulars, and I found no securities which would not come within the statutory requirements.

Q. The statute provides the type of securities the banks must furnish, and unless they come within that they would not be accepted?

A. Yes, sir. That, however, is a question for the Commissioners Court. As to the negotiability of those securities, that would be a question problematic on the part of anybody to venture an opinion at this time. However, they are all securities of municipalities, county subdivisions or districts of this state, and as they mature they certainly should be inherently sound. Of course, they represent what any bond does,—the ability of the municipality, subdivision or road district in good faith to pay their indebtedness. As to whether they do it or not, you will have to see what the future brings.

Q. You don't know whether that security is mentioned in the bill of particulars, whether that is still with the trustee bank or not?

A. As far as my investigation goes they are still there.

Q. You haven't learned that any

of them have been placed with the Reconstruction Finance Corporation and cash obtained?

A. They could not be if the agreement has been carried out.

Q. If they had asked you whether or not they could have been,—whether that could have been done, you would have told them it could not be?

A. That would have been my opinion.

Senator Martin: That is all I care to ask.

Senator Sanderford: I desire to ask the witness some questions.

Questions by Senator Sanderford.

Q. Did I understand you to say that the contracts let by the State Highway Department to the different contractors in the several counties, that those contracts were let before the agreement between the State Highway Department and the several counties, as to the method of financing?

A. No, sir, you must have misunderstood me, or I made a misstatement. I did not intend that. I understand before the Highway Department entered into any agreement of that kind it always had the agreement with the county beforehand. First, the county and the Highway Department enter into their agreement as to the amount to be furnished by it, and the character and type of improvements, and then when all of that has transpired between the county and the Highway Department and the contract entered into, then the Highway Department lets the contract to the contractor.

Q. Why, in your opinion, did you restrict the Highway Department from going on with other counties, than the twenty-one counties in question?

A. Just what do you mean?

Q. I understood from your opinion that you restricted the Highway Department in your opinion from making this same kind of agreement with other counties than the several counties mentioned.

A. I did not think it probably would be well to follow out that procedure in every instance. That is a situation arising after the making of the original contracts, and that is something that came up subsequent to the original agreement with

the counties, and I would not advise it as an original proposition.

Q. However, if this certain matter had not come up, and they had called on you for an opinion as to that procedure, your opinion on that would have been different?

A. It would be different as an original proposition. That is to say that you were going to start out now with a county. A county approaches the Highway Department for aid, and says "We will furnish you aid if you make the improvements on the highway," and the Highway Department says, "Have you sold your bonds?" or "What form are your bonds in?" and the county says, "We have a bank that is unable to pay, it has frozen assets, but we have that bank's pledged securities. We will put them up," I would not advise that. But here is a matter that is in progress of completion; it arrests the progress of the work. It is a wholly different state of facts to the condition you present. Your law is based on your facts in every case. We are passing on the Security Trust Company transaction with a particular state of facts, and we base the law on those facts; we base the law on each case. We would not want to lay down a general proposition of law to cover every situation that might arise. As to advising the Highway Department to do that, I think it would be largely a question of policy, involving a question of law, and we would have to have the facts presented in detail on these various transactions. I am laying an opinion down on the statement of facts that existed with reference to the Security Trust Company. That is why we wrote the second opinion, to advise everybody, and then we laid it down on the next situation.

Q. The letter of January 14th stated, I believe, that the depository was not able to pay the cash?

A. Yes, sir.

Q. Your opinion came after you had the full knowledge that the depository could not liquidate, even though they had deposit certificates of cash?

A. Yes, sir.

Q. Will you please, just for the sake of an example, detail a transaction of a single county, just any county that has a contract in process, a road contract in process, that the Commissioners Court took their

bonds that were yet unsold down to the Security Trust Company and made the agreement with them and the Highway Department? Will you outline for us a concrete example of what the process was from the time they left the county until right now?

A. I imagine that the situation was that either the county, municipality, or road district voted bonds by a vote of the people for a certain amount, at a certain rate of interest; the record was approved by the Attorney General for a certain amount within the statutory limits. The bonds were printed, executed and submitted to the Attorney General and were approved, and then the bonds were turned back to the county, and there remained in their custody. The statute provides they shall remain there until sold, a bona fide sale made. I imagine the county then sought a purchaser, probably found the Security Trust Company as a willing buyer at a willing price within the statute, and the county sold those bonds to the banks. And the county knew at the time that these particular bonds were voted for a particular project, because the county, or the voters of that county had a particular improvement in mind at the time they cast their vote. It is probably a state highway; it is bound to have been, or the county would not have been able to put up its aid. It sold these bonds; the county at the same time had been negotiating with the State Highway Department, telling the county—whether county or district or political subdivision,—has voted so many bonds, and we are willing to aid you if you will aid us in the construction of this road of a certain type. When they sold those bonds they knew all of this, this tentative arrangement with the Highway Department,—they may not have been formulated, but they had them in mind, it was probably in the mind of the State Highway Engineer and the Department. They probably sold the bonds to the Security Trust Company, and the Security Trust Company issued a certificate. They then entered into the agreement with the Highway Department with reference to this particular construction. The Highway Department demanded that this money be there, this being their policy, to see that these escrow

agreements are placed with the county; that the money obtained on this contract is put in escrow in some bank designated by it, properly secured under the statute by a bond of some kind, and the county does that. They probably put the same money back in the Security Trust Company, which probably acted in the capacity of both purchaser of the bonds and depository for the county. The depository then put up its bonds. In this type of bonds there are three types of bonds a depository may put up. Personal bond, executed by personal sureties; or pledge surety bond, its own bonds, or pledges the security of others, or a surety company bond, which is provided for. However, very few surety company bonds are written for depositories, in fact none to my knowledge. In this case the county depository agreed upon and pledged municipal securities.

Q. Municipal?

A. Yes, sir. They were put up and the contract between the county and the Highway Department made, and the Highway Department pledged itself they would go ahead and let contracts on this construction, and the Highway Department expected to be reimbursed from the county's portion as the work progressed.

Q. After the Security Trust Company had purchased these bonds and given a certificate of deposit and the State Highway Department required that additional security be put up, they did that?

A. I presume they did.

Q. And the Security Trust Company in turn put up the county bonds they purchased, could they do that?

A. You mean the identical bonds?

Q. Yes.

A. Yes, I believe likely they could. There had been a bona fide sale between the county and the Security Trust Company.

Q. Do you know whether they did?

A. Not of my own knowledge that they did.

Q. If they didn't do that and put up as surety bonds municipal bonds, or district bonds, or what not, was there any appraisal made of those securities that were put up there?

A. By whom?

Q. By anybody.

A. I presume there was on the part of the county.

Q. It seems like the State Highway Department would have been most interested in being well secured.

A. Well, that is a question up to the Commissioners Court as to securing their part of the funds, but as a precautionary measure the Highway Department generally requires the bank to execute at the bottom of the contract. The ones that I have seen the officers of the bank says that so much money has been placed in escrow on this contract, and that it has placed a security bond with the county, executed by the bank. I don't think there is anything in the statute that requires the Highway Department to go out and see about the securing of these bonds.

Q. If the contract in process had required only half of the funds, and the law that was enacted,—which was the case of some of them, relieved the county of the requirement of putting up a certain portion,—

A. Yes.

Q. Then was it so the county, after meeting their part, was it so the county could then come back to the Security Trust Company and ask for their balance in cash, or else the securities that they sold them?

A. Well, no, under the settlement agreement they could not have gone back. That is what brought about the entering into of the settlement agreement to put these securities up. The contract that is down there now is really a pledge contract between the county and the Highway Department.

Q. And the Security Trust Company?

A. Well, the Security Trust Company agrees to the transaction. As to the benefit under that settlement agreement, I don't know that they are. They simply turned the control of the securities over to the Highway Department and the county, and that is the way the Security Trust Company signed it. They acquiesced in the taking of the securities on the part of the county.

Q. The point I am driving at is the county can't come back on the original bonds down there?

A. No, sir.

Q. They could not get back the original bonds they took down there?

A. No. Well, they could if the

security the county could get was the type of security bought.

Q. That is the point I am getting at. Now, since the assumption Act we all know the bond market, and everybody else regards these county bonds as worth par, because the State gasoline fund is behind it, plus the county; that is about as good security as we could get.

A. Yes.

Q. Now, the Security Trust Company is in position not to keep those 100% bonds and say to the counties and the State Highway Department "Here are your escrow bonds" and they might not be worth ten cents on the dollar. Isn't that the situation?

A. It would depend upon the type of the securities. The statutes control that.

Q. Do you know of any county that has gone back and tried to recover the original bonds?

A. Not that I know of.

Q. You don't know that?

A. No, sir.

Senator Fellbaum: I want to ask a question.

The Chair: Proceed.

Q. When was that agreement made with the Security Trust Company—when was that agreement made that the Security Trust Company could act as depository for these counties?

A. They had twenty-one transactions.

Q. At separate dates?

A. I imagine it would be.

Q. Do you know about when?

A. I have no idea.

Q. Who could tell you?

A. I imagine the records of the trust company and the counties would show the agreement.

Q. (Senator Holbrook) Judge Gaines, you have some personal knowledge concerning—at least, some opinion about some of those bonds. I call your attention to one in my district, Matagorda County,—don't you consider those Matagorda bonds about as good as any in the State?

A. Yes, sir, any bond owed by Matagorda County is as good as you find anywhere. Of course, different types of bonds will vary, you know.

Q. You don't know of any of those bonds selling at eighty cents on the dollar, do you?

A. No, sir.

Q. (By Senator Hornsby) How about the bonds of the city of Monahans, out on the desert?

A. I don't know. I don't come from that section. I presume the reason Senator Holbrook propounded his inquiry to me was because I come from Matagorda County,—that is, I come from the adjoining county.

Q. (Senator Stone) Was the Attorney General's department called on to write any of these agreements? I am talking about prior to January, 1932?

A. No, sir. You mean what agreements?

Q. The escrow agreements, the contracts, or any of those sort of things?

A. Those escrow agreements and contracts are approved by the Attorney General's department.

Q. And your department approved all these twenty-two contracts?

A. Don't misunderstand me. I mean the Attorney General's Department approved the form of the contracts. We don't see the contracts when made, and we have nothing to do with the execution of them. We only approve the form.

Q. You just furnish the Moffatt's Form Book?

A. Yes, sir.

Q. (Senator Woodward) These bonds that you are being interrogated about, as I understand it, are the bonds which the counties accept as security for their deposits?

A. Yes, sir.

Q. Whether those bonds were good or bad, worth much or little, the Highway Department had nothing to do with it?

A. No, sir.

Q. That was a matter with the Commissioners Courts and the depositories?

A. Yes, sir.

Q. In this instance, the Security Trust Company?

A. Yes, sir.

Q. The Highway Department had nothing to do with the issuance of those bonds?

A. No, sir.

Q. They were not a party to the issuance of those bonds?

A. No, sir.

Q. And the Highway Department merely took those securities from the counties, or rather, looked to

those securities which belonged to the counties?

A. Yes, sir.

Q. As security for what the counties owed the State Highway Department?

A. Yes, sir.

Q. If there was anything wrong in the giving of those securities as a pledge for the debt that the depository owed the county, then that was a matter for the Commissioners Court and not the Highway Department?

A. That is correct.

Q. (Senator Poage) I want to get this thing clear in my mind, as to the various steps in this transaction. Am I correct when I assume that the first step in this transaction, as to each of these counties, was that a county, say McLennan County, would come to the Security Trust Company with a hundred thousand dollars of bonds and sell the bonds to the Security Trust Company. The Security Trust Company would actually pay them a hundred thousand dollars for the bonds and McLennan county would say "We will leave the money on deposit with you." That is the first step, is it not?

A. The price of those bonds and the sales between the counties and the Security Trust Company, such as they were,—I don't know whether they bought all the bonds from those particular counties, or not. I don't know whether they paid par, or par and accrued interest, or not,—or what.

Q. I don't think McLennan County ever sold a dollar's worth of those bonds,—in fact, I know they did not. But I am simply using that as an illustration.

A. Yes, sir.

Q. Any county that would bring a hundred thousand dollars worth of bonds,—the first step was a county brought bonds, and if we make it concrete we can get it more clearly in mind?

A. Yes, sir.

Q. We have talked so much in the abstract this afternoon. If it was McLennan County, your first step would be they would bring a hundred thousand dollars of bonds and sell them to the Security Trust Company?

A. Yes, sir.

Q. And if they sold them for par

they would get a hundred thousand dollars?

A. Yes, sir.

Q. In actual practice they deposited it with this bank, the Security Trust Company?

A. Yes, sir.

Q. The same bank that bought the bonds?

A. Yes, sir, in many instances they did.

Q. Those are the ones we are talking about right now.

A. All right.

Q. That left McLennan County with a hundred thousand dollars credit in the Security Trust Company?

A. Yes, sir.

Q. Under the law, to leave the money the bank must secure the county in one of three ways, a personal bond, a surety company bond, or by pledging other safe securities, which included the very kind of bonds they were buying?

A. Yes, sir.

Q. The bank did secure that hundred thousand dollar deposit by pledging McLennan County—using that as an illustration,—a hundred thousand dollars worth of some kind of bonds,—not the same bonds they got, but identically the same kind of bonds from other counties?

A. Yes, sir.

Q. That is what they actually did, wasn't it?

A. I don't believe it shows they used the identical same kind of bonds, but we will say that they pledged the statutory character of bonds.

Q. Which included the very kind of bonds that they had bought?

A. Yes, sir.

Q. And while that—I will not say the whole twenty-two counties simply got their own bonds reversed between the counties, but a large part of the bonds securing the deposits from one county were bonds that had been purchased from another county?

A. In many instances, yes, sir.

Q. All that happened before the Highway Department stepped in, didn't it?

A. Yes, sir, it should have.

Q. What?

A. It should have.

Q. I am trying to find out what did happen,—not what should have happened.

A. I wouldn't want to be testifying as to that because I don't know as to those previous transactions,—how long they left those funds down there,—unsecured, or not. That is what they should have done. The Commissioners Court should have done that. Whether they were derelict in their duty, or whether they demanded immediate security, I don't know.

Q. Do you know of any case where they did leave them unsecured?

A. I don't know whether they did, or did not. The only thing I know is when the Highway Department stepped into the picture, apparently. That is when the Highway Department went to dealing with the counties and they got to inquiring about where the county aid was. They would send down to the Security Trust Company and say "How much have you got?" and they would tell the Highway Department, and then the Highway Department would enter into a contract with the county to do this work and the contract would be signed.

Q. You have already told that. Let's go into it step by step, because there is some disagreement among some of us. I want to get each step as we go along. Those steps must have occurred before the Highway Department entered into contract with these counties?

A. They ought to have had some kind of bond.

Q. The bank should have, to protect the counties?

A. Yes, sir, it should have given the counties a bond.

Q. And the kind of bond they were giving was the pledging of securities?

A. I don't know as to those bonds.

Q. You don't know anything about what kind of bonds they had up?

A. No, sir. The only thing the Highway Department is interested in is that portion of the bonds,—sometimes they voted bonds a part of which was used on lateral roads, and a part of which they placed up here for highway construction, and the only thing we are interested in is that portion on deposit with the depository, that it was secured by the statutory bond, because that is what

the Highway Department was interested in.

Q. That is what I am talking about. That part was secured, by that kind of pledge?

A. Yes, sir.

Q. That is the only part that I am talking about.

A. All right.

Q. Then those steps must have occurred before the Highway Department stepped into the picture?

A. Yes, sir.

Q. Then the Highway Department made a trade with the counties,—we will still follow the same illustration,—McLennan County. They say "We are going to build a certain amount of roads and you are going to use a hundred thousand dollars, how will you pay it?" and McLennan County says "We have a hundred thousand dollars on deposit with the Security Trust Company and we will place that in escrow." Do they do that, or do they issue checks?

A. The original transaction is, they place it in escrow under a contract between the Highway Department and the county to which the bank agrees. That is the original situation.

Q. Those bonds remain up as a pledge to protect the county although the Highway Department at that time had no interest in the bonds that were pledged to secure the deposit in the bank, did they?

A. Well, this contract that the Highway Department and the county enters into, the bank signs, that the money will be left in escrow and not be diverted by the county or anybody else for any other purpose.

Q. We are never going to understand each other unless we get this to a concrete case. Assume that McLennan County sold a hundred thousand dollars of bonds to the Security Trust Company and made the deposit and agreed with the Highway Department to pay the Highway Department that hundred thousand dollars. In the meantime the Security Trust Company is presumed, under this theory, to have placed up as a pledge the bonds of somebody else, and we will assume in this case they were Tarrant County bonds. I understand they were not, but assume that. They put up as a pledge a hundred thousand dollars of Tarrant County bonds to secure that McLennan County deposit. McLennan

nan County has those bonds as a pledge?

A. Yes, sir.

Q. When they enter into this escrow agreement with the State of Texas, between the State Highway Department, McLennan County, and the Security Trust Company, what becomes of those Tarrant County bonds?

A. They are supposed to be up there as pledged security.

Q. Where were they supposed to be?

A. Supposed to be in the hands of the trustee.

Q. Well, who was that trustee?

A. Well, that would depend on which bank was designated as trustee—that is supposed to be another bank.

Q. Do you know in the case of the Security Trust Company who actually was the trustee?

A. Well, they had twenty-two trustees.

Q. Did they, or did they have just one?

A. Well, I don't know.

Q. Do you know who any of the trustees were?

A. I believe I have seen one of the names, I don't recall. I am not familiar with that part of it.

Q. Do you know in any of the transactions who the trustees were? Other Austin banks?

A. Yes, sir, other Austin banks.

Q. Well, there aren't but two or three other Austin banks.

A. One of those.

Q. In other words, those bonds were taken out of the Security Trust Company and placed in one of those other banks?

A. That is what is supposed to have been done.

Q. Now, after a county gave checks or warrants, whatever they gave, to pay one hundred thousand dollars it owed the Highway Department and the bank was unable to pay those checks or warrants and so notified the Highway Department, the counties, if I understand the situation, the practical effect of it was that the State Highway Department, the county and the bank, the Security Trust Company entered into another agreement whereby the Security Trust Company in effect said, "We owe this one hundred thousand dollars but can't pay the check; you have the legal right to demand this

one hundred thousand dollars; we recognize the fact that you have the legal right to this one hundred thousand dollars of bonds pledged, we will say to the American Trust Company as trustee,—you have the right to demand that the trustee give you those bonds, we recognize that agreement,—"

A. (Interrupting) Yes, sir, that is what they agreed to.

Q. That's what they agreed to in the second agreement?

A. That's it.

Q. And as a matter of fact did turn them over and the bonds are still in the American National Bank?

A. American National, yes, sir.

Q. And the American National is now trustee, not for the Security Trust Company, the county and the State Highway Department, but merely for the county and the State Highway Department?

A. That's the situation.

Q. And the Security Trust Company is washed out as far as the bonds with the American National are concerned?

A. Yes, sir.

Q. And the American National, as I understand the last agreement, they are to be held until such time as the county and State Highway Department think it advisable to sell them?

A. Yes.

Q. And then if they sell them and they bring eighty thousand dollars, or a twenty thousand dollar loss, and the Security Trust Company down there has nothing left in assets,—if the Security Trust Company has anything left in assets, would it still be liable for that twenty thousand dollars? I understand they are not included in it, but if they are solvent, or if in the course of liquidation there are any dividends, will they be liable for that twenty thousand, or won't they be liable for it?

A. Well, I haven't gone into that phase of the question. That will be a legal problem that will have to be threshed out.

Q. Did you write this agreement, Judge, that escrow agreement?

A. I don't believe I did. I believe it was submitted to me and I saw it afterwards.

Q. You are not ready to pass an opinion as to whether that escrow agreement relieves the Security Trust Company of any liability for any de-

iciency which may exist after the sale of those bonds that are pledged?

A. I don't believe it relieves them. I haven't investigated the legal phase of it.

Q. Well, it is a rather involved legal phase, isn't it?

A. I think so. That will develop when they come to it. We won't know and it won't develop until those things are transferred.

Q. Shouldn't we know in advance whether we are going to, at least know if we are to have a claim on the Security Trust Company, or simply swap off all rights which it is admitted is not worth one hundred thousand dollars?

A. Well, that depends upon the securities.

Q. Shouldn't we know now what are our rights?

A. If you want to submit the question for investigation I will be glad to go into it. I haven't investigated it and am not now prepared to render a legal opinion on an off-hand proposition that way.

Q. I just want to know what the intention of the parties was, whether they intended to relieve the Security Trust Company of any liability?

A. No, it wasn't the intention to relieve them of any liability. It took the only thing that was theirs to be taken and that was those bonds. They couldn't pay; they had bonds and we couldn't get anything else and took them rather than file suit to recover against them.

Q. (Senator Hornsby) Did I correctly understand your testimony to be that at the time of the execution of the escrow agreement that there was no authority or responsibility on the part of the Highway Department to make any investigation as to the volume or value of those securities that they were accepting under this agreement?

A. That is largely a matter on the part of the Commissioners Court. Of course, the Highway Department, as a matter of policy have been cautious,—very cautious as to the character of the securities offered.

Q. I understand your testimony is they had no authority in the matter?

A. No, that's a matter for the Commissioners Court.

Q. Had to accept them regard-

less of value, whether or not they were approved by the Attorney General's Department, or had any value at all or not, they had to take them? Did they do that?

A. Well, they exercised sound business judgment. I think that's a matter for them to exercise. No statute requires it.

Q. (By Senator Parr) Do you know when these counties went and sold their bonds to the Security Trust Company, and they put the money there to their credit, do you know if they gave them their bonds to secure the payment of that money?

A. No, I don't know.

Q. Let me tell you what I think.

The Chair: That's a question of argument.

Q. I think they done exactly what I did. We sold bonds to the Security Trust Company, put the money in here to our credit, and they didn't give us anything to secure the payment of that money and paid us every dollar as we went down the road, and I think that is what those other counties did.

Q. (By Mr. Hooper) Mr. Gaines, in the pledge contract entered into between the counties and the Highway Department at the conclusion was it not provided that the certificate of deposit held by the county should be transferred to the Highway Department?

A. In the supplemental agreement?

Q. Yes.

A. Yes, sir.

Q. Now, isn't that certificate of deposit a claim against that bank for the entire amount of the deposit?

A. Absolutely.

Q. Then aren't you willing to express the opinion as an attorney that the Highway Department has a claim for the full amount of the deposit regardless of the amount of bonds?

A. Yes, sir.

Q. (By Mr. Petsch) Isn't it a fact that by virtue of the execution of the last agreement the Highway Department did not surrender any character of claim either against the county to obtain an additional claim direct against the Trust Company?

A. Yes, sir.

Q. Is it possible then that by any contract that either the coun-

ties or the State of Texas could have lost anything by virtue of the transactions which took place under your supervision?

A. No, sir.

Q. (By Senator Poage) Judge, it is your opinion then that the State Highway Department can hold the county, we will say Bell County, which is one of these counties here, as I understand it that county can be held for any deficiency between what the bonds will pay and the amount of the agreement which Bell County agreed to pay on the project in question?

A. To the quantity of those bonds and the whole security. It seems to me that the State Highway Department will look to those bonds which the county pledged and the county is primarily responsible to the Highway Department.

Q. Under your supplemental agreement which has been referred to, if the project in Bell County,—if Bell County was to pay one hundred thousand dollars on that project, and if the bonds will only bring eighty thousand dollars under liquidation is Bell County still indebted to the State Highway Department in the sum of twenty thousand dollars under your supplemental agreement?

A. I don't think so.

Q. Then your supplemental agreement did not provide that the county would still be liable?

A. I don't know as to this question. I would have to study a little further; that's a pretty deep legal question.

Q. At any rate the contract which had been entered into was an obligation on the part of the State?

A. Yes, primarily.

Q. It was the obligation of the State,—of the Highway Department—then in taking these additional securities under their supplemental agreement with the Security Trust Company and the county was simply better securing the State Highway Department, was it not?

A. That is my opinion of it.

Q. In other words, they might have lost under their contract with the county if they had not taken that; is that your opinion about it?

A. Well, yes, that would be my opinion under the circumstances of this case.

The Chair: Judge Gaines you will be excused with the thanks of the Committee.

Senator Patton: I now make a motion that we adjourn until Monday morning at 10:00 o'clock.

The Chair: There is a telegram here addressed to the Lieutenant Governor, (reading) "Please read the accompanying announcement to the members of the Legislature before adjournment today. It will give us a great deal of pleasure for the members of the Legislature to accept our invitation." (signed) Charles N. Zivley Manager University of Texas Men's Glee Club.

"Members of the Senate,

Senate Chamber, Austin, Texas.

"You are cordially invited to hear the University of Texas Mens Glee Club in concert tonight at eight o'clock at Gregory Gymnasium please present your Publix passes for admission.

CHARLES N. ZIVLEY.

Manager The University of Texas Men's Glee Club."

The Chair: Gentlemen, the motion is to adjourn until 10 o'clock Monday morning.

Senator Purl: I move that we recess until eight o'clock tonight and get through with it.

The Chair: I guess the longest time comes first.

Senator Holbrook: I move that we adjourn until 10 o'clock tomorrow morning. Make it 9:30 and it will be better.

Motion to recess until Monday at 10 was put and defeated.

The motion to adjourn to 9:30 a. m., Saturday, February 18, 1933, was thereupon put and duly carried.

SUPPLEMENT—(Continued).

Saturday, 9:40 a. m., February 18, 1933.

(The Committee being called to order by the Chair, the following proceeding were had.)

The Chair: All right, gentlemen, call your next witness and let's get started.

Senator Martin: There is one thing I wanted to take up. I tried to talk to Senator Woodward, and I talked to Senator Redditt about the matter. It has been called to

my attention that some of the county judges feel like that inasmuch as they are being drawn into this investigation here, the county judges of these counties that were affected, that they should be permitted to appear here and have representation in here, and individually I never thought of any such thing when we were drawing up the manner of procedure here.

The Chair: Is there any objection to the county judges having representation here in the Senate.

Senator Woodward: Certainly not on my part, so far as having representation is concerned. I do not see the necessity of crowding the table with an attorney for everybody who may be mentioned in the proceedings. I am fixing in a minute to put one of the county judges on the witness stand. Personally I have no objection to their having representation.

The Chair: All right, call whoever you want for your next witness and we will get ahead.

Senator Hornsby: If the managers cannot agree on this matter I will make a motion that the county judges have permission to have their counsel here.

Senator Redditt: Never mind, we will agree that they can have whoever they desire in here.

Senator Martin: I want to recall Judge Gaines and ask him a few questions.

Scott Gaines, recalled to the witness stand, testified as follows:

Questions by Senator Martin.

Q. Mr. Gaines, yesterday in speaking of these special depositories, I don't want to worry you, but I have not got this in my mind clearly. If I understand the twenty-two counties that were involved in this transaction, in addition to their ordinary county depositories, which they possibly had in their own county, they had a special depository here in which they kept bond funds, is that the way you understand that?

A. It is my understanding that in most instances that was probably the case, but of course, Senator, I further understood and my investigation showed that the bank here not only acted as a special depository for certain counties in the matter of their escrow funds county Highway Department for roads' con-

struction going for the portion of the counties' aid, but further was the officially designated county depository for all of the county funds of other kinds. I believe Travis County was one of them.

Q. All right, now, you say the officially designated county depository?

A. Yes, sir.

Q. Who had the authority to name it as the official county depository?

A. The commissioners court.

Q. The State Highway Department had nothing to do with that?

A. Not to my knowledge, and in my opinion they did not.

Q. You don't know of any reason, or why these various counties would pass around their home-county deposit and bring their money and put into this bank?

A. No, sir.

Q. You refer to the funds as escrow funds. Why should they be called escrow funds up until such time as this last agreement was entered into?

A. Because the county is required under its contract with the State Highway Department to put up these funds in escrow to the amount of the county aid.

Q. All right. You don't know then whether the Highway Department had anything to say with reference to where these funds should be placed or not?

A. I don't know of any reason why they should.

Q. Well, they are going to put them in escrow, ordinarily carrying out the escrow agreement each party to that agreement would have a right to say where the funds would be placed?

A. I understand that is a matter left in the control of the commissioners court of the county.

Q. Then the funds would not be in escrow if it was left absolutely in the hands of the commissioners court?

A. Well, the county designates its depository, and escrows the funds in that depository.

Q. Whether that suited the Highway Department or not, whether the places they selected suited them?

A. I don't believe they would have any control over that, outside of a contractual relationship.

Q. I hope you understand what I am getting at is as to whether or

not the commissioners court of these twenty-two counties are totally responsible for having selected the Security Trust Company here as their depository, or whether or not the Highway Commission had some say in designating the place where they would place these funds that were to be used on the highway project?

A. I can only answer that question, Senator, this way, that under the statutes, as I see them, and my interpretation of them, it would impose no duty on the Highway Department to see to the proper depositing of this character of funds. That would be a matter under the law that would be attended to by the county commissioners court. However, under the statutes, the Highway Department being given authority to contract with the county, under that general authority it might make such terms and agreement with the respective counties as it deemed proper in the matter.

Q. You don't know then whether or not the contract which the county had, these various counties had with the Highway Department carried any provision that these funds should be deposited in any particular bank and left there?

A. No, sir.

Q. You were not advised as to that?

A. No, sir. I will answer that by saying that from my experience as a county judge with reference to this character of contract, that the Highway Department to furnish county aid for this construction, the commissioners court always designated the depository in which these funds were to be placed; selected it and attended to the matter of procuring the bonds and presented those matters to the Highway Department. That was all attended to by the commissioners court.

Q. In other words, when a county or district votes bonds, the law provides that those bonds shall remain in the hands of the commissioners court until sold?

A. Yes, sir.

Q. And when the bonds are sold the commissioners court takes the money and is responsible for the money?

A. Yes, sir.

Q. And if the Highway Department, in entering into a contract with the commissioners court demands that a certain amount of that

money be set over to meet their expenditures on any particular contract, and the Department demands it be deposited in particular places you don't know anything about that?

A. I never knew of any such demands on the part of the Highway Department. They usually demand that the money be placed in escrow in some reliable institution, but of course, as to what particular institution it is, that is a matter for the court in the exercise of their judgment, and the money is escrowed in that way.

Q. Then if the commissioners court of any particular county has selected this trust company here as its special depository, which applies to these escrow funds as you say—as far as you know, you say the Highway Commission has nothing to do with it?

A. I should not think so.

Q. Now, I noticed in your letter read here yesterday, dated January 27, to Mr. Johnson, you say, "And as there is no particular statutory provision as to when the State Highway Department shall cash warrants issued by the county in payment of its pro rata share of such construction, we cannot find any provision in the statute which would prevent the Highway Department from pursuing the course outlined in question 3." That is with reference to the Highway Department accepting a check and holding it, not presenting it for payment?

A. Yes, sir.

Q. Now, at the time you wrote that letter were you or not familiar with the statute, Senate Bill 48, Chapter 73, of General Laws of the Fifth Called Session of the Forty-first Legislature, which provides that the head of the Department shall deposit all money including fees of office, that are of determined status with the State Treasurer every day?

A. Yes, cash funds, isn't it, Senator?

Q. All cash funds. Well, what do you mean by cash funds?

A. Well, county warrants would have to be presented to the county for registration and passed in due order of business, and if it was not paid there would not be any money to turn over.

Q. The county warrants has to be first presented to the county for OK?

A. Yes, sir.

Q. Isn't that done under the stat-

ute; at first the county issues warrant, then it is signed by the county judge, or auditor and then approved by the commissioners court; it does not become a warrant until it goes through at court?

A. That is right.

Q. After it goes through that court it is a warrant?

A. Yes, sir.

Q. Now then, when that warrant is sent to the Highway Department down here under and by virtue of this provision of the law are they not required to cash it and put it in the State Treasury?

A. They should present it to be cashed; that is, present it to the county to be recognized by the county when the funds are available to pay it.

Q. Then under the law there was a statute at that time which inhibited the Highway Commission from sitting and holding those checks?

A. Well, I don't know that that would inhibit them. I would have to read that statute definitely.

Q. I just want to get the straight of it.

A. The particular portion of this that you have reference to is this portion, it is not; "All money is received by the head of the Department, including fees of office?"

Q. Yes, sir.

A. That are of determined status shall be deposited daily in the State Treasury on a depository warrant within five days after the receipt of such money.

Q. You see that follows another provision of the statute which has to do with moneys of undetermined status.

A. Moneys, yes.

Q. I will give you a history. At the time of the investigation of the Comptroller's Department in 1929, I believe, it was discovered that there was considerable money being held in what they called, "Suspense account," and this bill is presented requiring that all money be deposited in the Treasury when it came in. That came on up and somebody added on an amendment that says all money shall be deposited.

A. That is correct.

Q. Then there was at that time a statute which would inhibit them from holding the checks?

A. I don't know whether that would prevent them from holding

the county warrants. Warrants are not money.

Q. We will read further: "The State Treasurer shall receive daily from the head of each Department, each of whom is specifically charged with the duty of making same daily, a detailed list of all persons remitting money the status of which is undetermined or which is awaiting the time when it can finally be taken into the Treasury with the actual remittances which the Treasurer shall cash and place in his vaults or in legally authorized depository banks, if the necessity arises." Since the statute there refers to the undetermined form, refers to it as money, and says the Treasurer shall take it and cash it, don't you think it would include checks and warrants?

A. In the ordinary business transaction in the commercial world checks are accepted some universally. Even the tax collectors in all of the counties deal in the payment of taxes by means of checks. Practically all of his transactions are based on checks, yet as a matter of law that checks cannot be taken in payment of taxes, even though he issues a receipt, if the check is not finally cashed and it is not money to that extent. So as I understand it, the Highway Department remitted the county warrants to the State Treasurer to be handled and cashed through the Treasury. Of course in this case, as I understood, involving these transactions, they did permit these warrants to the State Treasurer, to ascertain if the counties or bank on which they are drawn were unable to meet the payments, and since they were unable to pay them then there was nothing to do but hold them.

Q. Even though the statute says they shall be presented,—

A. I don't know that the statute requires,—

Q. Now, this part I read,—where there might be a deposit today, somebody paying money, it says, "It shall be unlawful for the head of any department to keep on the deposit except with the State Treasurer any such funds as are of undetermined status, and all laws not in conformity with this are hereby repealed. All moneys received by the heads of departments, including fees of office, that are of determined

status shall be deposited daily in the State Treasury on a deposit warrant within five days after the receipt of such moneys."

A. I believe under that statute any head of any State department would be required to turn in to the Treasurer any money it had on hand in accordance with that Act. However I don't think the fact that a county issues a warrant to the Highway Department, which is evidence of a debt due by the county to the Highway Department, that is not,—I don't know anything in that that would be violative of that statute. That debt is for aid, represented by the contract. They would not have to turn that contract in to the Treasurer.

Q. Would you recommend then as an attorney for the Highway Department that they just sit and hold these checks?

A. Well, the warrants they hold them as evidence of the indebtedness of the county. The indebtedness that had been due as the work progresses.

Q. Now, would you say you would recommend that they sit and hold them? These warrants are given on the State depositories of these counties, these depositories didn't have the money—what would be the difference if they did have the money in going there and presenting the warrants and saying, "Give us credit," and not just sitting and holding the warrant? If they do not have the money in every instance the depository is indebted to the Highway Department?

A. Yes, sir.

Q. And the law provides that the heads of the Department can not sit and hold money but must put it in the depository?

A. Yes, sir.

Q. Then, they are having an open account with the depository, doing indirectly which they could not do directly?

A. No, I don't know that that is true, except the facts involved in these particular transactions, I don't think it would be violative of that statute.

Q. Since the law provides they can not have funds deposited around over the State in different banks, they have got to put it in the Treasury?

A. Yes, sir.

Q. They couldn't go down to that bank and hand that warrant in and say "Give us credit for that"?

A. No, sir.

Q. If they sit and say that "We know you haven't got the money and we are not going to present this and ask you to give us credit because the law says you can not, and we can not take credit for it, we have got to get the money when we present it." When they sit and hold that check, then they are carrying an account in that bank?

A. The only answer I can give is in my opinion. You ask for a statute there, and I understand the question is you are asking for my legal opinion as to whether or not in those particular transactions under investigation by this Committee, whether the fact that a county in issuing warrants against these particular escrow funds under this agreement, whether or not in the issuing of these warrants, if the Highway Department should hold these warrants, whether it would be in violation of the statute you have read to me that requires the Department to pay into the State Treasury moneys when they are due the State. In my opinion it would not be violative of that statute.

Q. All right, getting at it in another way, say the Highway Department has a warrant delivered to it by a county and it sits and does not deliver that warrant, or does not cash that warrant, or present it to the depository and get the cash, and the bank on which that warrant is issued should fail, who loses the money, the county or the Highway Department?

A. Well, if it just deliberately held a warrant—

Q. (Interrupting) Yes, under the contract or escrow agreement they have got here, whether deliberately or undeliberately?

A. Well, I imagine that would depend upon the reasonableness of the transaction, under the facts of the case. If a fellow negligently will hold the presentation of a warrant it possibly would defeat his claim. If you give me a check and I do not present it within a reasonable time, under the circumstances then my own negligence would probably preclude me from recovering.

Q. I am trying to get this in my mind as I feel like it ought to be.

The question comes into my mind like this: Here is the Highway Department holding, say, a fifty thousand dollar warrant that has been given by some county. It is agreed by and between all parties concerned that it is not going to be presented for payment, but maybe at the time the warrant is given this depository has the cash and can pay it, but they agree to hold it, to protect the depository. Now, if the depository fails and goes into process of liquidation, should the Highway Department file its claim, or should it turn the warrants back to the county and say to the county for them to file the claim?

A. Now, let me get the facts clear between us and clear in my mind. I don't want to evade the question.

Q. I understand you don't. I know you want to make it clear?

A. I want to understand what we are dealing with. In common parlance of county finances we talk about a warrant, in talking about county finances generally. If you have a claim against the county service, in any way, you present your claim and if the county has a county auditor the county auditor approves the claim and that claim is presented to the commissioners court who in turn audits and approves the claim, and there is a county warrant issued on that claim against the fund properly chargeable with the claim, whether it be the general fund, the road and bridge fund, the jury fund, or the permanent improvement fund, or whatever particular fund it is, and on the order of the commissioners court of that county the county clerk prepares a warrant,—what we call a county warrant cashable against a particular fund,—a legal one,—I mean a legal claim. The county clerk signs it, the county auditor countersigns it and it is presented to the county treasurer for registration in her book of claims, warrant claims, and under the statute that claim is payable in the order of its registration. It is not paid, Senator, until the funds are available to pay it.

Q. I am going upon the assumption there is amply sufficient funds to take care of these things.

A. When they are available the county treasurer issues her check, or his check, as county treasurer of the

county, in favor of the claimant, who then proceeds to the depository to get his money. Now, let's get back to the particular case in hand. Under the statute with reference to these particular contracts it requires a county warrant to be issued. It says how that warrant shall be issued,—in favor of the Highway Department. Now, if you connect those two propositions, it causes a county warrant to be issued to the Highway Department,—to be issued by the county clerk and approved by the county judge. I presume the commissioners court had approved the estimate of the Highway Department prior to the issuance of this warrant. That warrant, it would seem to me, if we are going to construe the thing together,—that is simple evidence on the part of the county and they owe the State Highway Department that much money. Now, that is the best answer I can give your question. I don't know as to whether or not those counties handled that matter in that way, or not, in reimbursing the Highway Department after these supplemental agreements were entered into. I can't say. I don't know whether they sent a check down here against the Security Trust Company, or how they evidenced the indebtedness on the part of the county back to the Highway Department to be payable out of these escrow bond funds down here. As to just exactly how they did that literally, I don't know. After this matter came to the point that it did in these particular transactions, as to whether they said "We will not bill you as the work progresses," or whether "We will wait until it is completed and bill you as a whole," or whether such counties kept issuing estimates as was the usual case, or whether they varied their usual procedure, or not. In these particular cases you will have to find out from the State Highway Department.

Q. The only way any county pays any debt is by what is known as a warrant?

A. Yes, sir.

Q. And that means the same thing as an individual giving a check? It is a call upon some particular fund, just like the individual's check would be upon his individual funds?

A. It is not a check in the com-

mon acceptance of the terms.

Q. I understand it has to come in its sequence, according to the amount of money on hand?

A. Yes, sir.

Q. In other words, if a county gives a warrant, that merely means that is payable if and when the county has the money on deposit?

A. Yes, sir.

Q. That is the only difference between a county warrant and an ordinary check, isn't it?

A. I will answer that the best I can. The counties kind of vary their procedure. Different ones have a different character of procedure in handling their financial transactions. My county is strictly on a cash basis and we issue just a simple warrant which we use as a check (when countersigned by the county treasurer. We always have available sums in our depository and therefore do not go to the point of carrying out the usual procedure as outlined by the statute, but simply have the county clerk issue a warrant, approved by the county auditor, and approved by the county treasurer, and it is presented to the bank direct and paid that way. However, the statutes lay down the rule that the county treasurer shall not issue her check unless it be based upon a county warrant. The statutes as I understand them require that she base her checks against the particular funds based upon a county warrant legally issued and on a legal claim. The warrant is the simple evidence of the debt.

Q. I would like to get that warrant business straight in my mind.

A. I don't know how they handled these payments, actually, in these transactions after they transpired. As to those details, I can't say. The Highway Department can undoubtedly advise you on that.

Q. In referring to these warrants, in order for the county to issue bonds there has to be a vote by the people?

A. Yes, sir.

Q. But the county commissioners court might issue warrants, I believe you said yesterday, for road construction?

A. Certain types of warrants.

Q. Certain types?

A. Yes, sir.

Q. Can they issue warrants be-

fore there are any bonds voted and sold?

A. Well, what we have been speaking of defining has been what we know as the ordinary county warrants. There is such a warrant known in the common parlance as a time warrant.

Q. You are not having reference to time warrant in your conversation here?

A. No, sir.

Q. Now, Mr. Gaines, one thing I want to ask you about here before I forget about it. Since the Legislature has enacted a law inhibiting the Highway Department from calling upon counties for funds to match the State in the construction of roads,—and as you said yesterday, if this procedure had not been followed out the Highway Department would now be having to pay money back to the counties to take care of the part they had paid in on these constructions,—you follow me there don't you?

A. The Highway Department to pay back to the county?

Q. Yes, sir.

A. I don't understand that part of it.

Q. The Legislature passed a law—

A. (Interrupting) Pardon me, Senator, I see. You are speaking of the assumption law?

Q. Yes, sir. You said yesterday the Highway Commission would have to be paying back to the counties for what the counties had already paid in on these roads?

A. I don't know about the board down here, the State Bond Board, whether it is handling this transaction as to these particular counties, or whether they are recognizing that portion of the debt of these counties or not. Of course, that bond assumption law is limited to a certain extent.

Q. All right. We will assume, from the question propounded yesterday by someone, I don't remember who, that if this procedure had not been carried out under and by virtue of the provisions of the statute we passed here requiring the Highway Department to reimburse these counties for such sums as they might have been paying out, or had paid out,—we will assume then the Highway Department is doing that?

A. Yes, sir, that is the bonds voted.

Q. Then why shouldn't these bonds or securities of these various counties that have been put up down here in this depository, why shouldn't they be delivered back to the counties?

A. Well, because these pledged securities are not necessarily evidences of that particular county's debt. The Refugio County escrow fund is probably secured by bonds of another county.

Q. Those bonds belong to Refugio County?

A. They belong to the escrow fund.

Q. Why shouldn't they be delivered back to that county?

A. Which county?

Q. The people who are entitled to receive it. Let me get at it this way. If Hill County had seventy-five thousand dollars worth of bonds—

A. (Interrupting) I can answer that by saying it will take care of itself. Through the machinery set up for assuming the debts. I don't think they should go around the statute and hand back to these counties these bonds out of this escrow fund because that will be attended to through the machinery set up by the assumption bond law. If any of these securities from any of the counties mature during the period covered by the assumption bond law it will take care of itself. Whatever county is due the money will be reimbursed.

Q. If it has not been assumed why should they deliver the securities back?

A. If it has not been assumed they would not be entitled to have them delivered back under any condition.

Q. I will put it this way—

A. (Interrupting) I don't think you and I understand the assumption law. I don't pretend to understand all about it myself. We have had considerable trouble interpreting it and putting it into force. That is, dealing between a particular county and the State on its own obligations. The assumption Act does not pretend to pay only that portion of the debts falling due within the period of 1933, and so forth, and only would cover particular bonds of particular issues due from the respective road districts and political sub-

divisions, and counties, and could not be handled through this fund here,—in other words, it would have to be handled through the regular way. I don't think there could be any way by which this Highway Department could handle those escrow funds except through the procedure set up.

Q. Well, now, in order that we might get it in our minds correctly—in order that I may get it in my mind, suppose my county has fifty thousand dollars worth of bonds and can't sell the bonds—say it does sell the bonds and puts the money down here in the Treasury or depository. The depository gets to where it can't pay, then the county is called upon to put up additional securities to secure the Highway Department, and that's put in some other bank to be held as trustee?

A. Yes, sir.

Q. Now, suppose they have not checked a dime out of this fund and this statute coming in here now saying that the Highway Commissioners call on them for it, why shouldn't it be handed back?

A. The contracts we have in these twenty-two counties were all entered into and a completed transaction prior to the assumption law, and wouldn't affect these transactions at all. I see your point now, what you are trying to tell me—why insist on this at all?

Q. Doesn't affect it at all then why insist on holding the security—why not hand it back?

A. As I understand it, Senator, about August, 1932, the Highway Department adopted the policy of not requiring further aid from counties, August, 1932, and about September, 1932, the Third Called Session of the Forty-second Legislature passed the Assumption Act. The Assumption Act provided and made it the law of the State to require no further aid from counties, but that was not retroactive so that it would affect prior transactions.

Q. But in transactions since that time the security should be handed back?

A. The security should be handed back and that's the policy that is being pursued, I understand, by the Highway Department.

Q. Now, then, one other thing about the warrant I was asking you about a while ago that the Highway Department is holding; after having

that in mind a little while, if the Security Trust Company should fail today who should file the proof of claim, the Highway Department or the commissioners court of the county?

A. I should think that both of them should probably join in. Of course, it would primarily be up to the county to recover against the depository on its failure.

Q. On its failure?

A. Yes, sir, on the depository's failure; should recover what it can out of the securities held by the depository.

Q. You recommend both of them should file proof?

A. Yes, sir.

Q. Then if both of them filed proof that would be an admission on the part of the Highway Department that they had a deposit in that bank?

A. It would have a claim for the extent of the deposit.

Q. I find under Article 6665 with reference to the organization of the Highway Department, the last sentence says: "A quarterly statement containing an itemized list of all moneys received, and from what source and of all money paid out, and for what purpose shall be prepared and filed in the records of the Highway Department and a copy sent to the Governor." How would you recommend that the Highway Department report that fund?

A. Report it in the form of a claim against this escrow fund, but of course, that's a matter for an accountant to attend to—the accounting department and of course is a matter with which I am not familiar and they can explain how they carry it.

Q. Shall contain an itemized list of all moneys received and from what source, and of all money paid out and for what purpose, shall be prepared and filed in the records of the Department and a copy sent to the Governor. You wouldn't have any recommendation to make with reference to how the report should show those warrants they are holding?

A. Well, simply would have to report them as claims against the counties for the particular amounts which might be due.

Q. Do you know whether or not these reports have been made?

A. No, sir, I don't.

Q. You haven't had any occasion

to examine to see whether or not they have?

A. No, sir.

Q. (By Senator Hornsby) What is the maximum limit fixed by statute for the amount of warrants to be issued by a county without a vote of the people—what is that maximum?

A. What character of warrants?

Q. Any character of warrants—county warrants?

A. The maximum amount of bonds which may be issued by a political subdivision, or a county is vested under the provision of Section 2, Article 3, of the Constitution which carries with it the road bonds, drainage district bonds and certain water improvement bonds and is limited based on the assessed valuation of real property in the county or district, or political subdivision.

Q. Haven't we a statute which limits the amount to three thousand dollars without a vote of the people?

A. You are talking about warrants—you asked about bonds?

Q. No, I said county warrants.

A. There is a law on the statute books, the bonds and warrant law of 1931, to which you have reference, I presume which limits the amount of county warrants that may be issued under the type of warrants known as time warrants, or interest bearing warrants that any city or county or what-not that is in effect, but there is no limit on the amount of regular warrants that may be issued in the regular course of the county's business; the only limitation on the amount of warrants is on the type of warrants referred to as time warrants, which create a debt against the county. A debt against a county is any obligation not payable out of county funds or certain funds, but on that type of warrant I don't know that it limits them to three thousand dollars. That limitation varies according to the population of each county as to time warrants. Of course, it is very difficult to understand these types of securities without going pretty intricately into it. It is a deep process of law. Time warrants are not involved in this transaction whatsoever.

Q. (By Senator Redditt) Judge Gaines, you were a former county judges, were you not?

A. Yes, sir.

Q. How long did you serve as county judge of Brazoria County?

A. Four years.

Q. Ordinarily isn't it a fact that most of the commissioners courts select some bank in the county as the depository?

A. In most instances, yes, sir.

Q. The depository of course is selected after notice is given by bids, is it not?

A. Yes, sir.

Q. Do you know of your own knowledge, or have you any information, or have you any opinion as to why the particular twenty-two counties in Texas selected the Security Trust Company as the depository for those particular counties?

A. I do not know, sir.

Q. You do not?

A. No, sir.

Q. Isn't that a bit unusual for a county to do that?

A. Doesn't appear to be so in this case. My experience as county judge, and I presume you are asking me to answer your question based on my experience as county judge.

Q. Yes.

A. As far as my experience as county judge goes we always selected a bank within the county in which we deposited all escrow and general county funds. However, in this case it appears that the Security Trust Company was selected as the depository for a great number of counties—in at least twenty-two involved in this transaction.

Q. Do you know anyone who knows or can give us any information as to why this was done?

A. You might inquire of the county judges involved and the county commissioners as to why they selected this bank.

Q. Now, Senator Martin asked you with reference to the statute passed in 1930, which became effective March 25, 1930, requiring heads of departments to remit funds to the State Treasurer within five days from receipt of same. Of course, we recognize that a check isn't cash, and the payment of obligations due the State by check, while it may be accepted in the ordinary course of business, isn't a legal payment of the amount due.

A. No, sir.

Q. Under the law the Highway Department or any other department of the government should receive from any county a warrant for a particular payment of any amount for any county it would be the usual

and proper thing for the Department head receiving the warrant to either deposit that warrant with the State Treasurer—that is done, isn't it?

A. Yes, sir, I understand it is.

Q. Or following the legal way to handle the matter would be to send the warrant to the county treasurer for a check on the particular fund on which it was drawn, that's correct?

A. Yes, sir.

Q. Now, did you mean to say a few minutes ago that the method followed in this particular arrangement you say, was legal?

A. Yes, sir.

Q. Holding those warrants?

A. I don't believe under the facts involved and the purpose of the Act referred to that it was illegal. I don't think these transactions violated the statute.

Q. Now, do you know, Judge Gaines, I believed you testified yesterday that when any county in Texas selected a depository by the proper and legal methods any funds of that county that should be placed with the depository had to be secured in three separate ways mentioned?

A. Yes, sir.

Q. Either by a surety bond, personal bond or securities of some kind or character?

A. Yes, sir.

Q. Now, do you know why any county in Texas selling to the Security Trust Company of Austin its bonds, would be authorized, or should accept as a matter of good judgment, any other bonds than its own as security?

A. I hope I understand your question.

Q. In other words, for example, suppose Brazoria County sold this Security Trust Company of Austin five hundred thousand dollars in bonds issued by that county.

A. Yes, sir.

Q. And when the sale is made the bonds, of course, are delivered to the Security Trust Company.

A. Yes, sir.

Q. And a deposit slip of course given to the county.

A. Yes, sir.

Q. And you testified yesterday that there is nothing in the statutes of Texas to prevent the Security Trust Company in complying with the security law from placing those

bonds received up as security for that deposit?

A. Yes, sir.

Q. Because the sale had been made?

A. Yes, sir.

Q. Then do you know of any reason why the twenty-two counties involved in this matter should not have required the Security Trust Company of Austin to place their own bonds as security for those deposits?

A. I don't know of anything that would have prevented them requiring it after a bona fide sale of them, but as to whether or not they did that, I think that is a question of policy and judgment on the part of the county officials and whether or not they acted wisely or unwisely is a question minds may differ on. I don't think it would be illegal for them stipulating that they should demand that they be so placed, but whether they get it or not I don't know.

Q. Is it a fact if the respective counties had required the Security Trust Company of Austin to place their own bonds up as security there would have been no possibility of either the State Highway Department of Texas or the counties sustaining any loss in the matter?

A. Well, I shouldn't think so.

Q. That's true, isn't it?

A. If they had gone that route.

Q. As a matter of fact when the Security Trust Company of Austin bought those bonds they at least deposited this money to the credit of the county, didn't they?

A. Yes, sir.

Q. I understand under certain agreements whereby the funds were to be drawn out possibly so much per month?

A. Yes, sir.

Q. Now, assuming that agreement was made, isn't it a fact that those bonds which the county sold to the Security Trust Company, if they were placed as security for any deposits, after the county had made one withdrawal of that fund there would have been no possibility of the State Highway Department or the county sustaining any loss at all regardless of what happened to the Security Trust Company?

A. That would depend on the bond market. The county receiving its bonds would be in the shape as

in receiving bonds from any other county of a like type and value to the extent of whether they would recover. The bonds would not be payable until maturity, or until the county was in funds to take them up. If they accepted their own bonds they would have to wait their time the same as with any other security.

Q. That's true. They would have their own bonds back?

A. Yes, sir.

Q. Regardless of the market value of those bonds?

A. It probably would have been the better course to pursue in the light of events.

Q. Do you know of any reason why any of those twenty-two counties would sell to the Security Trust Company their own bonds and not take their bonds as security for their deposit,—any business reason why they should do that?

A. No, sir.

Q. None whatever?

A. No, sir. That's part of the commissioners court. They do a lot of things in the exercise of judgment and they might be criticized from my standpoint or yours, but, of course, theirs is the responsibility and what they do within the law is their lookout.

Q. But you as county judge would not do that?

A. I would try to secure as good security as possible.

Q. Now, do you know whether or not the Security Company, or whoever was representing the Security Company advised these counties that they could not put their own bonds as security for those funds on deposit in that bank?

A. I don't know that that was done, no, sir.

Q. Do you know who represented the Security Company in this transaction or do you have information as to that?

A. Well, I understand General Keeling represented him.

Q. General who?

A. General Keeling.

Q. Do you know what part if any, or if H. C. Burt & Company of Houston had anything to do with these transactions?

A. If H. C. Burt & Company had anything to do with these transactions I don't know it.

Q. Now, Mr. Gaines, when any of those twenty-two counties sent

the State Highway Commission of Texas a warrant on that depository for any particular amount, when this warrant was presented legally to this depository, this depository would have been compelled under the law to pay that warrant or close out, wouldn't it?

A. Yes, sir.

Q. That is right. Do you know of your own knowledge, or do you have any information as to whether or not any other county in Texas made the Security Trust Company of Austin its depository?

A. From conversation with the officers of Travis County on numerous times we spoke of the Security Trust Company with the county judge of Travis County and the county auditor and learned in conversation with them that that bank was their depository.

Q. Was there some reason, or some reason with any bank, that Travis County might favor the Security Trust Company as a depository if they sent out a low bid? As a matter of law, if they could secure their bid, the commissioners court of Travis County would have been compelled to award to or make this bank its depository?

A. Yes, sir. I think our department has definitely ruled that the matter of selecting the county depository by the commissioners court is wholly a matter of discretion.

Q. That is, discretion of the commissioners court, that is correct?

A. Yes.

Q. Yes. Assuming the bank had made a proper bid, there is no reason why Travis County should select the Security Trust Company as a depository?

A. No reason why, no, sir, but they were a going concern and solvent.

Q. And you know of no other reason why any other county in Texas would select the Security Trust Company as its depository, except for some particular purpose it wanted to carry out?

A. Except for its own purposes.

Q. (By Senator Woodward.) Judge Gaines, I want to ask you some questions. I will ask you for instance, were you investigating the activity of the Highway Commission to take any action as to issues and sales of bonds by the counties?

A. That is my understanding.

Q. In other words, you were not undertaking to investigate whether or not the county judges and commissioners exercised a sound discretion or followed an unwise course in the matter of selecting depositories?

A. No, sir.

Q. Now, with that understanding, I will ask you if, in the selection of a depository by a county, if the Highway Commission has anything to do with it?

A. No, sir.

Q. And does the Highway Commission have anything to do with the question of the class of securities which are tendered the county as security for the deposit the county has with the depository?

A. No, sir.

Q. And whether or not the commissioners court would exact of the depository the county's own bonds as security is a matter within the discretion of the commissioners court?

A. Yes, sir.

Q. And is a matter over which the Highway Commission has no control?

A. Yes, sir.

Q. So that if any county, take any county,—I will take Concho County for illustration, for I hope to call Judge Sims as the next witness—if in the case of Concho County they elect to select the Security Trust Company as the county depository, and if they do not exact of the depository their own bonds as security, that is a matter then within their own discretion?

A. Yes, sir.

Q. They could have if they wanted to do it exacted their own bonds as security?

A. Yes, sir.

Q. And they could have accepted bonds of other counties and in such amounts as would be satisfactory security as they recognize?

A. Yes, sir, within the law, the character of security covered by the statute.

Q. Covered by the statute. And they could have wanted a personal bond or a surety bond, or something else, whatever the statute authorizes or describes?

A. Yes, sir.

Q. Now, Judge Gaines, I would ask you if you do not recognize the law to be in this State, as announced by the Supreme Court—the appellate

courts—that the holder of a check that is drawn on a bank has never got the right of collection of that instrument as against the bank?

A. That is my understanding.

Q. And if the bank should refuse to take the check, or warrant, or whatever it is, that holder of it could not maintain an action against the bank, but that would be up to the other party who gave the check?

A. Yes, sir.

Q. There being no contract of agreement between the parties to that particular transaction?

A. No, sir. Of course, my testimony as to the law of this case is purely personal opinions of my own.

Q. Yes, I understand. I believe that is all.

Q. (By Senator Reddit) A question in rebuttal; in response to my question, Judge Gaines, you said you didn't know of and were advised twenty-two counties selected the Security Trust Company as a depository. Then in response to Senator Woodward's question you said the Highway Commission didn't have anything to do with it. Now, you don't know whether they did or not?

A. Well, he has asked me as to the law, as I understand it.

Q. Yes, but you don't know whether the Highway Commission had anything to do with it or not?

A. Yes, sir.

Q. You don't mean to testify that they did not?

A. I don't mean to testify that they did not in these particular transactions. What I mean is, as a matter of law, it cannot be required.

Q. Of course, as a matter of law, it would be between the commissioners courts for any matters to comply with the law?

A. Yes, sir.

Q. And the matter is within the discretion of the commissioners court?

A. Yes, sir.

Q. And you did not mean to testify the particular reason this was done?

A. No, sir.

Q. And you don't know why it was done?

A. No, sir.

Questions by Senator Woodward.

Q. Judge, you don't know whether these other counties, the twenty-

two counties that have been mentioned, had any time prior to this any agreement—

A. I was advised, Senator, there were no others. I know of my own knowledge Travis County is one.

Q. Is it your understanding that the City of Austin had selected this institution as its depository?

A. I don't know that.

Q. Have you any information as to whether or not University funds are in that institution?

A. I don't know.

Q. Now then, if, upon the presentation of those warrants, or checks, or whatever you call them that were given by the county to the Highway Commission, the banks had refused to pay, that would have been an act of bankruptcy, wouldn't it?

A. Yes, sir.

Q. And the banks so refusing could have been forced into liquidation?

A. Yes, sir.

Q. What would have been the effect, in so far as the State is concerned, if that had been done—would they have been in better shape or worse condition?

A. Well, if the only thing they could look to that was there to get hold of was those securities, and there was no market for the securities then, and if they were forced through the proposition or forced through bankruptcy, the sale of those securities would have been forced on a low market, and there was a low market at that time and a pretty low market now.

Q. Now, any action that could have been instituted against the trust company with reference to any particular county deposit would have been a matter which the county itself would have to instigate, wouldn't it?

A. Yes, sir.

Questions by Senator Martin.

Q. Mr. Gaines, did you investigate to see whether or not if the county had demanded the securities at that time and had put them on the market, even at a low rate or low price, they had to put them up, did you investigate to see whether or not they had ample security there to protect those deposits?

A. No, sir. I thought it would not matter anyway, because they were there, whatever they were.

Q. Well, if there was sufficient

security there for the counties to have taken possession of them, sold and recovered every dollar they had in their deposits, then the act of allowing them to stay there and not doing anything with them was an act to befriend the Security Trust Company, and not the county or Highway Commisison either, was it?

A. Well, I think that the action pursued as far as that is concerned, was the attempt to take the county funds, an escrow fund, and collection for money in Security Trust Company—take the Security Trust Company, as far as that is concerned, we had to take into consideration not only that escrow fund but had to take into consideration all of that large amount of public money that was in escrow there and attempt to work out the proposition with the least injury to the funds in the bank.

Q. If the County of Hill had \$50,000.00 on deposit, and the County of Hill had a fund of \$50,000.00, and accepted bonds which could have been sold at fifty cents on the dollar, and had gone in there and asked for its pay, and put the bonds on the market, that county would not have been hurt at all, would it?

A. No, sir.

Q. But the Security Trust Company might have suffered, might it not?

A. Well, I don't see that it would have suffered. It was obligated to the county for this amount of money and had these particular securities and they were county securities and notice had already been given to meet these obligations by sending these checks and so forth on the part of the county.

Q. All right, when they did that they would have released the securities of that bank, and that bank would have had to close its doors, wouldn't it?

A. It was practically closed then. It was not in a liquid state, in fact it was not honoring withdrawals, although holding assets that were on their face apparently of good amount. Of course owing to the bond market they were almost unsaleable any type of securities. I think the best type of securities almost had no market or values. A market very inferior to its intrinsic value, and I think it was the right of any county, under our dealings with the proposition, it was a matter

wholly with the county to get its securities back. If any counties there had the sufficient securities, then it could have taken into their possession and gone out and sold them on the market to reimburse the county, that was wholly a matter the county could have done, because I advised the county judges to go down there and take the possession of their bonds and take them in their own hands, and if they found a market to cover their deposits at that time they could do so.

Q. You advised that according to the law as you saw it at that time?

A. Yes, sir.

Q. (By Senator Stone) The idea of requiring these securities to be put on these county aid projects was in order to assure the Highway Department in getting its money?

A. I presume that was one of the main purposes and of course to secure to the county these funds.

Q. The Highway Department is interested in the county getting in the money only in so far as that money was coming back to the Highway Department?

A. No, sir, in seeing that its usual portion was paid.

Q. And these escrow agreements were only to protect the Highway in its portion coming back under the county aid project?

A. That is true, it would protect them to that extent.

Q. Do I understand you to say there was no duty on the Highway Department to see whether or not the proper securities were put up to insure their collecting that money?

A. No, sir, I know of no provision. Of course, the law is very elusive, there may be provisions in there, but in my diligent search of the statute I have been unable to find any that would place the duty on them.

Q. Then under your construction of the law they had to take whatever the county put up to them?

A. They relied on the county's judgment.

Q. Do you think there was an implied obligation on the part of the Highway Department to scrutinize those things as a matter of good business practice?

A. I understand they did as a matter of good business practice to the extent they always required the

bank to acknowledge the funds were secured, and legally secured, and that the money was on a deposit at a given bank to reimburse the Highway Department, but as to the details of that, of course, that was a matter to be attended to on the part of the commissioners court in requiring a legal bond and a similar statement was made that same was properly secured.

Q. And there is no way under the law to require the Highway Department to do anything except accept whatever the county put up to them?

A. No.

Mr. Hooper: I would like to ask a few questions.

Q. (By Mr. Hooper) I believe you have already testified that under the laws the Highway Department is vested with discretion to enter into any sort or character of agreement as to the amount of county aid shall be furnished to a given county?

A. Yes, sir.

Q. The Department has authority,—does it not, or had authority at the time this transaction occurred to construct highways without the aid of a county at all, did they not?

A. That is my construction of the law.

Q. Doesn't the law also provide they can do it with or without county aid?

A. That is true.

Q. Do you know of anything that would prevent the Highway Department, even at this time, from releasing the twenty-two counties from the obligation in a contract which was entered into between the Department and the county for the county aid?

A. No, sir.

Q. Or from adjusting any loss or difference that might result, or adjusting any contract for county aid?

A. I think the matter of making contracts, contractual relations, and changing the same is wholly within the power of the Commission.

Q. In other words a suggestion has been made that the Highway Department stands a chance to lose something on this. They have the highway, do they not, the State owns the highway, the highways have been constructed?

A. Yes, sir.

Q. The counties have not lost anything?

A. No, sir.

Q. Don't they have the highways?

A. They either have them or they are in course of construction on these particular projects.

Q. That was the very purpose of making this arrangement?

A. Yes, sir.

Q. That was to continue the construction then under contract, and to protect the Highway Department from loss under the contract that they had entered into with these counties?

A. Yes, sir.

Q. That was the only purpose for which these bonds were pledged to the Highway Department?

A. Yes, sir.

Q. Now, since that time, as you suggested yesterday, the county aid is prohibited?

A. Yes, sir.

Q. And as suggested a moment ago, in August of last year the Highway Department under the authority had by the statute at that time adopted a policy of not accepting county aid under any circumstances?

A. Yes, sir, as to future contracts.

Q. Except as to right-of-way?

A. Yes, sir, except as to right-of-way.

Q. There was another consideration which I wanted to ask you about. Isn't it true that at the time this matter was presented to you, and at the time it was being considered by the department there was a real and pressing demand for employment throughout the State?

A. As presented to me it was a very serious situation in that regard, and particularly on the part of the counties represented at the conference.

Q. Wasn't it represented to you, as a matter of fact, that if the Highway Department should refuse to go with those contracts that hundreds and maybe thousands of men would be thrown out of employment?

A. That was the representations to me.

Q. That would aggravate a very bad situation that existed in employment conditions in those counties?

A. That was represented to me by the county representatives in the respective cases, that that existed. They insisted that at all events the work would have to go on, just from their standpoint in that way to re-

lieve the unemployment situation and to the construction of the roads.

Senator Woodward: I don't know how long this cross examination, or examination, may continue, but Judge Sims is a county judge from one of the counties and has some urgent business matters at home, and he wants to get away by noon if he can. I don't think it will take us long to take his testimony and I would appreciate it if you gentlemen would hurry through with this witness, or recall him.

Senator Redditt: We were through with Judge Gaines, but in view of the fact that Mr. Hooper asked him some more questions I want to ask some questions in response to the questions propounded by Mr. Hooper.

Q. (By Senator Redditt) You said that the counties got the roads, didn't you?

A. They had gotten them or were in process of getting them.

Q. Now, will you tell this Committee who is going to pay for the bonds turned over to the Security Trust Company by these twenty-two counties which were legally voted by the people of those counties?

A. The bonds that were legally voted and issued and sold at bona fide sales of course they are outstanding legal obligations against the county to be paid by the tax levy in time.

Q. The point is, somebody is going to have to pay the bonds because they are not now in the hands of the Highway Department or the Security Trust Company?

A. The bonds are outstanding and are obligations against the district.

Q. And what these counties received in lieu of those funds are bonds and obligations of other counties are now of questionable value, that is right?

A. That is true, that is the situation, yes, sir.

Senator Martin: I have one other question.

Q. (By Senator Martin) In answer to questions propounded to you by Mr. Hooper with reference to the financial condition of this country and the question of employment of the people and what it would have meant to the people who were work-

ing upon the highways for these projects to have been stopped. In writing your legal opinion with reference to the rights and powers of the Highway Commission you did not take that into consideration?

A. One of the elements taken into consideration, to the extent that it was legally possible that we could do, we strained every point of the law, and stayed within the law at the same time, to work out a plan that would be legal in order to relieve the condition.

Q. Do you admit you strained the law?

A. No, sir. But I mean to say that in view of the very serious situation that we made a thorough and unlimited search of the statutes to advance the various plans of the procedure that might be legally worked out that would take care of the situation, and they wanted it in the very shortest time possible which the transaction required, and I believe that the plan that was approved was legal and within the statutes.

Q. And if you had not so believed you would not have written the opinion regardless of what condition might have been brought about?

A. No, sir.

Q. That is all, Mr. Gaines.

A. What I meant to say was we did make a different effort to work out some plan that would be legal, that would be fair, and would save all concerned the least amount of injury, and particularly on the part of the counties.

Q. That is all.

Senator Sanderford: In view of the fact that Bell County, my home county, is one of the counties in this investigation, I want to ask permission of the Chair to have counsel sit in with me and listen and be permitted to question, as a matter of protection to my county.

The Chair: Is there objection? The Chair hears none. It will be permitted.

Senator Martin: We offer in evidence Article 6674-G, as follows: County Warrants for Construction.—Said county aid shall be paid to the State Highway Department for deposit in the State Treasury to the credit of the State Highway Fund in partial payments as the improvement progresses. It shall be paid

by warrants issued by the county clerk and countersigned by the county judge and approved by the commissioners court upon accounts of the State Highway Department certified by the State Highway Engineer. Said accounts rendered by the State Highway Department shall be based on certified accounts of contractors, laborers and materialmen previously paid by the department, copies of which accounts shall be filed in the county with the accounts rendered by the department; the purpose of issuing said county warrants being to reimburse or partially reimburse the State Highway Fund for moneys paid out of same in improving the section or sections of highway for which county aid has been granted. (Acts 1925, 39th Leg., Ch. 186, p. 457,-7).

Senator Martin: And an Act of the Forty-first Legislature, being Senate Bill No. 48, on page 230, as follows:

Relating to Bond of Comptroller,
Treasurer and Deposit of
Moneys.

S. B. No. 48.) Chapter 73.

An Act to amend Articles 4343, 4368 and 4388 of the Revised Civil Statutes of Texas of 1925, and declaring an emergency.

Be it enacted by the Legislature of the State of Texas:

Section. 1. Article 4343 of the Revised Civil Statutes of Texas of 1925, is hereby amended so that the same shall read as follows:

Bond,—Within twenty days after receipt of notice of his election or appointment and before he enters upon the duties of his office, the Comptroller shall give a bond with a good and solvent surety company, authorized to do business in this State, in the sum of seventy-five thousand dollars, payable to and to be approved by the Governor, conditioned that he will faithfully execute the duties of his office. All expense necessary and incident to the execution of such bond shall be paid by the State by appropriation.

If the Comptroller shall willfully neglect or refuse to perform any duty of the Comptroller as set out in this Chapter or elsewhere in the Statutes of Texas he shall forfeit to the State a sum not less than One Hundred Dollars (\$100.00) nor

more than One Thousand Dollars (\$1,000.00) for each day that he shall so neglect or refuse to perform such duty; and it is hereby expressly provided that the surety company executing the Comptroller's bond, as herein provided for, shall be jointly and separately liable with the Comptroller for such sums to be forfeited.

The penalties provided for in this Chapter shall be recovered by the Attorney General in a suit brought by him in the name of the State of Texas; and venue and jurisdiction of such suit is hereby conferred upon the courts of Travis County.

Sec. 2. Article 4368 of the Revised Civil Statutes of Texas of 1925, is hereby amended so that the same shall read as follows:

Bond—The State Treasurer shall, within twenty days after he shall have received notice of his election or appointment, and before he enters upon the duties of his office, give a bond payable to and to be approved by the Governor, in the sum of seventy thousand dollars with a good and solvent surety company authorized to do business in this State, conditioned that he will faithfully execute the duties of his office. All expense necessary and incident to the execution of such bond shall be paid by the State by appropriation.

If the Treasurer shall willfully neglect or refuse to perform any duty of the Treasurer as set out in this Chapter or elsewhere in the Statutes of Texas he shall forfeit to the State a sum not less than One Hundred Dollars (\$100.00) nor more than One Thousand Dollars (\$1,000.00) for each day that he shall so neglect or refuse to perform such duty, and it is hereby expressly provided that the surety company executing the Treasurer's bond, as herein provided for, shall be jointly and separately liable with the Treasurer for such sums to be forfeited.

The penalties provided for in this Chapter shall be recovered by the Attorney General in a suit brought by him in the name of the State of Texas; and venue and jurisdiction of such suit is hereby conferred upon the courts of Travis County.

Sec. 3. Article 4388 of the Revised Civil Statutes of Texas of 1925 is hereby amended so that the same shall hereafter read as follows:

Daily Statements from Departments.—The State Treasurer shall receive daily from the head of each department, each of whom is specifically charged with the duty of making same daily, a detailed list of all persons remitting money the status of which is undetermined or which is awaiting the time when it can finally be taken into the Treasury together with the actual remittances which the Treasurer shall cash and place in his vaults or in legally authorized depository banks, if the necessity arises. The report from the General Land Office shall include all money for interest, principal and leases of school, University, asylum, and other lands.

A deposit receipt shall be issued by the Comptroller for the daily total of such remittances from each department; and the cashier of the Treasurer's department shall keep a cash book, to be called "suspense cash book," in which to enter these deposit receipts, and any others issued for cash received for which no deposit warrants can be issued, or when their issuance is delayed. As soon as the status of money so placed with the Treasurer on a deposit receipt is determined it shall be transferred from the suspense account by placing the portion of it belonging to the State in the Treasury by the issuance of a deposit warrant, and the part found not to belong to the State shall be refunded. When deposit warrants are issued, they shall be credited in this cash book, as well as any refunds, and the balance shall represent the aggregate of the items still in suspense. Refunds shall be made in a manner similar to that in present use in the case of the General Land Office, and they shall be made on the Comptroller's authority.

The head of each department shall immediately place all money that is now held by him in a suspense or undetermined status with the State Treasurer on a deposit receipt as above shown.

It shall be unlawful for the head of any department to keep on deposit except with the State Treasurer any such funds as are of undetermined status, and all laws not in conformity with this are hereby repealed.

All moneys received by the heads of departments, including fees of

office, that are of determined status shall be deposited daily in the State Treasury on a deposit warrant within five days after the receipts of such moneys.

The head of any department who shall withhold from deposit any money that is of a determined status and should be deposited in the State Treasury on a deposit warrant, or is of an undetermined status and should be deposited with the State Treasurer on a deposit receipt shall become personally liable for three per cent interest per annum on the same for the time the deposit is so withheld, and this penalty shall be cumulative of all other penalties provided or to be provided by law.

Sec. 4. If any section of the Act shall be held to be unconstitutional, such holding shall not effect the remaining portions of this Act, and it is hereby declared that the Legislature would have enacted that part which is constitutional without having enacted the unconstitutional part, if any.

Sec. 5. Any person who shall knowingly and willfully violate any provision of this Act shall be deemed guilty of a misdemeanor, and upon conviction, shall be punished by a fine of not less than Fifty Dollars (\$50.00) nor more than Five Hundred Dollars (\$500.00) or by imprisonment in the county jail for not less than 30 days nor more than six months, or by both such fine and imprisonment.

Sec. 6. The fact that under the present laws many departments of the State government are now maintaining special bank accounts; that certain evils have resulted therefrom; and that there is need for more adequate penalties for failure to comply with the provisions of Chapters 2 and 3 of the Revised Civil Statutes of Texas of 1925 creates an emergency and an imperative public necessity requiring the suspension of the constitutional rule for the reading of bills on three several days in each House, and said rule is hereby suspended, and this Act is made to take effect from and after its passage, and it is so enacted.

Approved March 25, 1930.

Effective March 25, 1930.

(Note—S. B. No. 48 passed the Senate by a vote of 28 yeas, 0 nays; passed the House by a vote of 107 yeas, 0 nays.)

Senator Woodward: We will next call Judge O. L. Sims.

O. L. Sims, was sworn by the Chair to tell the truth, the whole truth, and nothing but the truth, and in answer to questions propounded, testified as follows:

Direct Examination.

Questions by Senator Woodward.

Q. For the purpose of the record I will ask you to state your name?

A. O. L. Sims, County Judge of Concho County.

Q. How long have you served as County Judge of that county?

A. A little over five years.

Q. How long have you lived in that community?

A. Practically all my life.

Q. Are you a graduate of any State institutions?

A. The State University.

Q. What department?

A. Civil Engineering.

Q. I will ask you to state whether or not Concho County had issued any bonds which have become involved in this inquiry?

A. It did.

Q. What was the extent of the issue, Judge?

A. Two hundred and eighty-five thousand dollars.

Q. And were those bonds sold to any company or any person?

A. Yes, sir.

Q. To whom?

A. The Security Trust Company of Austin.

Q. Do you recall the date of the sale?

A. The 27th of April, 1932.

Q. The 27th of April, 1932?

A. Yes, sir, that is my recollection.

Q. Just state to the Committee the circumstances under which and the reasons for and why the bonds were sold to the Security Trust Company?

A. The bonds were issued and advertisements were made for bids and several bids—

Q. I didn't understand you, Judge. Speak a little louder.

A. The Security Trust Company submitted the best bid and we sold them the bonds.

Q. Was that in April, 1932, or 1931?

A. It was 1931. I beg your pardon, it was April, 1931.

Q. Why was it you did not select a home depository or sell them thru somebody at home?

A. We put the matter up to our county depository. Naturally, they had the preference as we understood it, but they waived their rights as depository for these funds because they didn't care to take that size of bond, or deposit that much security securing the county funds of this district.

Q. Now, when you sold the bonds to the Security Trust Company, what did they do in reference to securing you,—or what did they do in reference to the deposit?

A. When we advertised these bonds for sale, at the same time we advertised for someone to act as our county depository. In their bid they made a bid for the bonds and also asked to be the county depository. We entered into a depository contract with them whereby they were to secure any deposits we had by legal obligations of other counties placed in a trustee.

Q. Now, did they give you those securities?

A. They deposited them with the trustee bank.

Q. Now, the trustee bank in your case was what bank?

A. The American National Bank of Austin.

Q. And what was the extent of the security, the amount of the security, deposited with the trustee bank to secure your county deposit?

A. In full of the amount of the deposit.

Q. And those securities consisted of what? I don't mean for you to itemize them, but just generally speaking?

A. Various bonds of counties, road districts and cities that came under the statute that outlines the kind of security that shall be put up in these cases.

Q. All right. Did the State Highway Commission have anything to do with the selection of your depository, or with the agreement you made with the depository, or with the selection of the securities offered by the Security Trust Company as security for your deposit?

A. No, sir.

Q. I believe they gave you a deposit slip?

A. Yes, sir.

Q. Evidencing the amount of your deposit?

A. Yes, sir.

Q. What was the agreement, if any, you had with the depository in

reference to withdrawals and so forth.

Senator Martin: The county commissioners court can not bind itself nor the county except in writing, and we contend that the written instrument,—the written agreement would be the best evidence.

Senator Woodward: I want to reply to that. It is a collateral matter and the rule of best evidence does not apply. Certainly, Judge,—Senator, you don't want to take the position here that we should not hear these matters, these collateral matters especially, without obtaining certified copies of all these matters. It is a collateral matter and the rule that the writing would be the best evidence does not apply.

Senator Martin: On yesterday we asked for a subpoena duces tecum for these people to come in and bring all these contracts, escrow agreements, contracts with the counties, to bring in all these contracts, and what the contract contains would be best evidence and we object to this witness testifying and giving his interpretations of what the contract says when the contract should speak for itself.

The Chair: Did you have a written contract?

A. Yes, sir.

The Chair: Do you have a copy of it with you?

A. No, sir.

The Chair: Do you know whether there is a copy available down here, or not?

A. I think the Security Trust Company has it.

The Chair. The Security Trust Company?

A. I think so. I didn't bring my file because I was down here on another matter. I have all of that at home. They are all a matter of public record in my county, but I brought no file with me.

Q. For the purpose of the record I will ask whether or not that agreement you had with the depository, whether the Highway Commission had anything to do with it or was a party to it in any way?

A. No, sir, they had nothing to do with it.

The Chair: The Chair dislikes to apply the rules of evidence strictly. I think this is more or less a collateral issue, but I believe the record could be supplied with a copy of the

contract without any difficulty and it might be safer to sustain the objection.

Q. All right. Now, Judge, after whatever agreement you had with the depository in reference to the funds here in the bank as the result of the sale of the bonds, were any contracts let by the State in reference to road construction in your county?

A. Yes, sir.

Q. Did the work proceed?

A. Yes, sir.

Q. During these times was there any agreement between you and your commissioners court and the Highway Department in reference to the cost of construction, or the part the county was to pay?

A. Yes, sir.

Q. As the work progressed were any withdrawals made from the depository?

A. Yes, sir.

Q. From the Security Trust Company?

A. Yes, sir.

Q. Did there come a time when the Security Trust Company failed to make any payments on any warrants or checks drawn against the funds?

A. I would rather have to go into detail on that.

Q. I am getting to the point where I want to turn it over to you for an explanation. Did a time come when those payments were not made?

A. We were so advised.

Senator Martin: We would like for that answer to be excluded from the record. It is hearsay, pure and simple.

The Chair: Ask the question again.

Senator Woodward: I asked if the time came when those payments were not made and he said he was so advised.

The Chair: Overrule the objection.

Q. Now, at about that time were you called to Austin by Mr. Johnson, one of the Highway Commissioners?

A. Yes, sir.

Q. Do you remember the date when you came?

A. It was about the 25th of January. I think it was Sunday afternoon that I came to Austin,—Sunday night.

Q. 1932?

A. Yes, sir.

Senator Martin: What time?

A. I think I came here on Sunday night.

Senator Martin: What day of the month, and what month?

A. That would be January 25th, 1932, as I recall.

Senator Martin: Thank you.

Q. Did you attend a meeting at the office of the Highway Commission the following day in connection with any other county judges?

A. Yes, sir.

Q. About how many county judges were there?

A. About twenty others.

Q. Do you recall who they were, or what counties they represented?

A. The County Judge of Bell County was there, the County Judge of Pecos County, the County Judge of Roberts County, Liberty County—I don't recall off hand, Senator, right now.

Q. Do you recall whether these counties were represented by their County Judges, Andrews County?

A. My recollection is every man answered the roll call except one. The roll of counties was called and it seems to me like there was one county judge who did not answer.

Q. At that conference did Mr. Johnson,—and I speak of the Highway Commissioner, Mr. Johnson,—go into a detailed discussion of conditions?

A. Yes, sir.

Q. And you, I believe, were a member of the committee in conference?

A. Yes, sir.

Q. I will ask you, Judge, to examine these minutes which were offered in evidence, and read in evidence yesterday, if you have not already examined them, and when you have examined them, state whether or not those matters and things in substance, according to your recollection, transpired?

A. Yes, sir, I can identify this.

The Chair: Can you identify this as an exhibit?

Senator Woodward: I am going to now. In connection with the testimony of Judge Sims we offer as part of the record again the identical minutes which were offered on yesterday, and I think referred to as Exhibit No. 3,—the minutes dated January 26th, 1932, which were read in evidence yesterday.

Senator Martin: We would object

to that going in the record on the ground it would be duplications and unnecessarily encumbering the record. It is a matter that the record already contains and there is no earthly reason for it to go in there.

Senator Woodward: We are offering it as part of the testimony of the witness, to identify it as the same instrument that was offered and read into the record on yesterday.

The Chair: I think if you can find the exhibit there and identify it by a number, that it will be all right.

Senator Woodward: That is all I want. I just want to identify it in the records. We will identify it later.

Q. Now, as a result of that conference, did you, or any of the county judges, visit the Attorney General's Department?

A. There were several of the judges that went over there. I didn't accompany them on the first trip.

Q. I will not go into that then. If you have any notice of any letter written by Mr. Johnson to the Attorney General seeking a legal opinion in reference to the matters you were discussing?

A. They were discussing that at that meeting that you referred to that morning, in Mr. Johnson's office.

Q. Do you know whether or not that letter was in fact written by Mr. Johnson?

A. That was my information.

Q. All right. Were you present when any reply to that letter was discussed?

A. Yes, sir.

Senator Woodward: In order that the record might make clear my interrogation I am referring to the letters which were yesterday read into the record, being the letter written by Mr. Johnson of date January 14th and the letter of date January 26th.

Senator Martin: We would want to ask that the question and the answer of the witness with reference to whether or not Mr. Johnson wrote that letter,—he says it was his information. We want to object to that, particularly to the answer, because of the fact it would be hearsay.

Senator Woodward: I didn't understand we were trying a criminal

case to be confined to technical objections, and things of that kind.

The Chair: Overrule the objection.

Senator Woodward: Let the record speak the truth.

Senator Martin: We are perfectly willing for it to speak the truth, but we don't think it is proper for the record to show this when he says that it is his understanding that Mr. Johnson wrote that letter. That is an unnecessary encumbering of the record because it proves nothing.

The Chair: Inasmuch as the Assistant Attorney General identified all of that correspondence rather specifically as coming from Mr. Johnson, I believe we would be quibbling over something that is hardly worth while.

Senator Woodward: It is an undisputed fact.

The Chair: Overrule the objection.

Senator Martin: With reference to these remarks of counsel that it is an undisputed fact, it may be undisputed but it is not yet an established fact.

The Chair: The Chair thought Mr. Gaines established that letter plainly.

Q. (By Senator Woodward) Well, at any rate were you present, Judge, when any communication from the Attorney General's office was read or discussed?

A. Yes, sir.

Q. As the result of that did you address a communication to the Attorney General's Department.

A. Yes, sir.

Senator Woodward: In connection with the testimony we offer again for identification purposes the letter which was read into the record yesterday by Judge O. L. Sims to the Attorney General.

Q. (By the Chair:) Judge Sims, did you hear the letter read yesterday?

A. Yes, I was in the gallery, but couldn't hear it all.

Senator Woodward: It's the letter dated January 27th, 1932, addressed to Honorable James V. Allred, Austin, Texas, and signed by O. L. Sims, County Judge of Concho County, and appears on pages 84 and 85 of the transcript.

The Chair: All right.

Q. Judge, were you present at

any time when resolutions were prepared by the committee of county judges on that particular occasion?

A. Yes, sir.

Q. Did you take part in that proceeding?

A. Yes, sir.

Q. And did you and the committee prepare resolutions and deliver them to Mr. Johnson?

A. Yes, sir.

Senator Woodward: In that connection we offer in evidence for identification purposes the resolutions which were yesterday read into the record by Mr. Gaines as a part of the file, purporting to be the resolutions adopted by the committee of county judges at that particular time. The page I will give you later. The resolutions appear on pages 72 and 73 of the transcript.

Q. Now, Judge Simms, I wish you would tell the Committee in your own way what brought you to Austin, and what occurred while you were in Austin in reference to this matter.

A. I received a letter from State Highway Commissioner Cone Johnson inviting me to come to Austin to confer with him on a matter of a great deal of importance to my county. That's practically the wording of the letter. I came down here accompanied by one of my county commissioners the night before. We met in Mr. Johnson's office the next morning, the 26th of January, 1932, as I recall it. Mr. Johnson told us that a few days previous a large number of checks had come in from these counties against this bank, and that the bank didn't have cash on hand at that time to meet them; that he called us down to try to work out some way whereby the situation could be handled.

Q. Now, Judge, up to that time had you had any notice of the condition of the bank or its failure to pay any checks?

A. No, sir.

Q. And up to that time had the Highway Commission had anything to do with the selection of the depository or giving to the county any security to secure deposits?

A. No, sir.

Q. All right.

A. We went into conference. First, Mr. Johnson read this communication to us. We selected a

chairman and adopted resolutions,—the purport of these resolutions was to ask the Attorney General certain questions by which we might work out the situation. That letter or that request went to the Attorney General's office, and I think, maybe the next day, I am not sure, but we got a prompt reply. After going over his opinion, some of us arrived at the conclusion that our questions given the day before were not specific enough, and I wrote that other letter, the second letter, requesting an opinion along certain lines. That letter I delivered personally to Judge Koons of the Attorney General's Department. He promised to call the matter to the attention of General Allred and his staff and I went home. Within a few days I got a copy of that opinion.

Q. You mean the opinion in response to the inquiry you had made in your letter?

A. Yes, sir.

Q. Do you remember to whom that opinion was addressed?

A. I think it was addressed to Mr. Johnson,—Mr. Cone Johnson.

Q. I will ask you to examine the letter dated January 29th, 1932, and tell the Committee whether or not that is the letter to which you refer?

A. Yes, sir, I can identify it.

Senator Woodward: The letter referred to, Mr. Stenographer, is the letter dated January 29th, 1932, addressed to Honorable Cone Johnson, State Highway Commissioner, State Highway Department, Austin, Texas, signed by Walter A. Koons and Scott Gaines, and is the same letter read into the record yesterday by Mr. Gaines.

Q. All right, Judge, as a result of our visit to Austin with those county judges, and as a result of those conferences, and these opinions, what was done?

A. We entered into a contract with the State Highway Commission whereby they held or impounded our checks covering estimates of work already done and to turn over to them as security bonds that were in escrow to us in the trustee bank.

Q. Did you enter into that agreement?

A. We did.

Q. And how many bonds were escrowed for the benefit of the State

Highway Commission in connection with the agreement?

A. Dollar for dollar.

Q. What did they amount to, what was the total sum?

A. Well, I am not prepared to give you exact figures.

Q. Well, approximately, Judge?

A. Our outstanding checks at the present time amount to about twenty-seven thousand four hundred dollars.

Q. Now, those bonds that were escrowed to the State Highway Commission, as I understand it, were the bonds of other municipalities, cities and towns, which the Security Trust Company had given to the county as securing the deposit?

A. Yes, sir.

Q. Now, in addition to those bonds which were escrowed to the Highway Department the county holds other bonds?

A. Yes, sir.

Q. What is the extent, what's the amount of the bonds that the county holds to secure the deposits?

A. \$223,000.00.

Q. Now, Judge, answer me this please; what security has Concho County got as security for the deposit which is in the Security Trust Company?

A. We have those bonds.

Q. Those bonds—identify those, please.

A. Well, they are various bonds issued by Texas municipalities, I mean by that, counties road districts, irrigation districts, and a few county warrants in small amounts and a few city obligations.

Q. Now, do they total the amount of the deposit?

A. Yes, sir. Now, wait a minute, Senator, they don't quite total it, because there has been a little accrued interest that we have received credit for.

Q. All right. Now then, have you any other security behind that?

A. We have the assets of the bank.

Q. Along with other creditors, if we might so call them?

A. Yes, sir.

Q. What has been the benefits, if any, accruing to your county as a result of the arrangement you and the other county judges had with the State Highway Department at that time?

A. If some arrangement hadn't

been made the work would have had to stop necessarily. Since that time we have had something like thirty-seven miles of road built; either grading and drainage structures, or paving. In addition to that, it has solved our unemployment problem.

Q. How many people have been employed in your county in connection with that?

A. At the present time there are over four hundred.

Q. Do you feel, Judge, that with the assets of the Security Trust Company, in connection with other creditors, and the security that you have to secure your deposits that your county is not going to lose anything?

A. No, sir, I don't think so.

Q. Don't think they will?

A. No, sir, don't think they will.

Q. Do you think that the arrangement made with the county judges in behalf of their counties, who were in attendance on this meeting with the Highway Department was to the best advantage of the counties and the Highway Department?

A. Yes, sir, I do.

Q. Oh, yes, in the selection of the securities which were escrowed in the Austin National Bank to secure the State Highway Commission and the obligations of the counties to pay their part of this construction did the State Highway Commission have anything to do with the selection of those securities?

A. No, sir.

Q. I believe I asked you whether they had anything to do with the selection of the securities which the Security Trust Company gave you to secure your deposit originally?

A. No, sir.

Q. And had nothing to do with the selection of the depository?

A. No, sir.

Q. Was it your understanding then as a result of that conference and during that conference did you understand that the other counties represented were in a similar condition and similar situation to yourself?

A. Yes, sir.

Q. (By Senator Redditt) How long have you been county judge of Concho County?

A. Five years.

Q. When were the bonds in question issued?

A. In the early part of 1931.

Q. 1931?

A. Yes, in March.

Q. How many bonds were issued by the commissioners court of your county, based upon the election for the bonds?

A. Two hundred and eighty-five.

Q. \$285,000.00?

A. Yes.

Q. Did the county vote bonds?

A. No, sir, they were district bonds.

Q. Which district?

A. Road District No. 1.

Q. When were those sold by the commissioners court of your county?

A. I think the date was April 27th, 1931.

Q. April 27th, 1931?

A. Yes.

Q. Who prepared for the commissioners court of your county this bond election, and all of the details of it?

A. I did.

Q. You did yourself?

A. Yes.

Q. Did you advertise for purchasers of those bonds?

A. I did.

Q. How many bidders did you have?

A. We had present that day about twenty-five or thirty bond buyers there; we only had two bids actually turned in.

Q. Who were they?

A. Mr. J. M. Radford, and an associate, of Abilene, he was one bidder, and the Security Trust Company of Austin was the other.

Q. Do you know what their bids were, off hand?

A. Mr. Radford bid par and accrued interest, and the Security Trust Company bid approximately 101 and 5-8, plus accrued interest.

Q. And they were the best bidder?

A. Yes.

Q. And you awarded the bid to the Security Trust Company?

A. Yes. That was a premium of \$4500.00.

Q. Who represented the Security Trust Company?

A. Mr. E. P. Cravens.

Q. Where does he live?

A. He lives in Austin.

Q. As a part of their bid was it agreed that the Security Trust Company should be made your depository?

A. We incorporated that in our proposal for bids.

Q. That the purchaser could,—
A. Could or could not enter into a depository agreement.

Q. Did Mr. Radford include a depository agreement in his bid?

A. They were willing to.

Q. Do you know about when the sale was completed of these bonds?

A. It was completed that day.

Q. I mean when you received the money for them. When did you receive the money for your bonds?

A. The bonds were delivered on deferred deliveries, \$25,000.00 a month, and we started immediately. \$35,000.00 was the first delivery, and \$25,000.00 on the first of each month thereafter.

Q. In other words, you did not make an outright sale of those bonds to the Security Trust Company, but an installment sale, based on partial payments?

A. We sold the bonds to them on deferred deliveries.

Q. And you delivered those bonds monthly in a certain quantity, and received deposit certificates from the Security Trust Company?

A. Yes.

Q. Did you investigate the Security Trust Company at that time?

A. Yes.

Q. You were satisfied as to its solvency?

A. Yes, sir.

Q. That was in 1931, about April?

A. Yes.

Q. How long was it from the time this sale was made until you did receive deposit slips, or certificates of deposit covering the entire amount due Concho County?

A. As well as I recollect it was after the January meeting.

Q. 1932?

A. Yes.

Q. Had Concho County made any withdrawals from this fund?

A. Yes, sir, quite a few.

Q. How much had you withdrawn?

A. I can't give you that offhand, because we had been buying right-of-way.

Q. Approximately how much would you say you had withdrawn by checks or warrants on the fund your county had in the Security Trust Company?

A. Seventeen or eighteen thousand dollars.

Q. Those checks were paid?

A. Yes, sir.

Q. Now, what arrangement did your county or did the commissioners court of Concho County make with the Security Trust Company as to security for your deposits?

A. They were to deposit in a trustee bank securities authorized by statute, dollar for dollar.

Q. Did you have a contract with them to that effect?

A. Yes, sir.

Q. Do you have that contract with you, or can you furnish a copy of it?

A. No, sir. It is at home.

Q. Will you, when you go home, send us a copy of it, addressed to Mr. Bob Barker?

Senator Woodward: Will you permit me to interrupt you a moment. The matters being interrogated about by Senator Redditt, as to the terms of that sale, and testified about, are the matters I asked about awhile ago, to which Senator Martin objected.

Senator Redditt: You overruled the objection, and as far as I am concerned, I agree with Senator Woodward, that we should not follow the strict technical rules of evidence; and I am willing to let any and all evidence be introduced, regardless of the technical rules of evidence.

The Chair: I sustained the objection, thinking that the contract itself could be brought here.

Senator Martin: It is not the question I objected to. The question I objected to was a general question.

Senator Woodward: I did not want to provoke an argument. I just wanted the record to show that the witness was testifying substantially to the same matters I have inquired about.

A. What contract is it you want?

Q. (Senator Redditt) The contract of sale and the contract or depository agreement you had with the Security Trust Company. Was that all one instrument, or two separate instruments?

A. Two separate instruments.

Q. Will you forward certified copies of those?

A. Yes.

Q. You said a few minutes ago, Judge Sims, that you went to the banks of your county with reference to acting as depositories?

A. Yes.

Q. Is that— And they did not

want to give the bond?

A. Yes.

Q. Is that the reason why you selected the Security Trust Company?

A. Yes.

Q. Now, did you, or the commissioners court of your county make any investigation as to the value of the bonds placed in the trustee bank by the Security Trust Company?

A. No, sir.

Q. You did not?

A. No.

Q. Then you tell this Committee that you permitted the Security Trust Company of Austin, Texas, to place with the trustee bank, as security for Concho County's deposit, any bonds that may have been legally issued, regardless of their value?

A. Bonds that had not been defaulted, and bonds that came under the statute,—that complied with the statute.

Q. Without reference to value?

A. Yes.

Q. You understand, Judge Sims, as County Judge, that one county might legally issue a certain quantity of bonds, another county might legally issue a certain quantity of bonds, and the value of those bonds, although they have been legally issued and approved by the proper officers of this State, might vary in value?

A. Yes.

Q. That is true, isn't it?

A. Yes.

Q. And then you tell this Committee that your county did not require of the Security Trust Company of Austin anything other than to place legally approved bonds as security, which had not been defaulted?

A. Yes. That was our understanding; that was all we had to do in the matter.

Q. You know, as a matter of fact, that the Security Trust Company of Austin, or any other bond buyer, could have gone out into the bond market and purchased legally issued bonds, of which you speak, on the basis of twenty-five cents on the dollar, and put them up as security, and take Concho County's bonds, which I understand to be worth a hundred cents on the dollar, in custody therefor?

A. We had lists of those bonds submitted to us.

Q. You said you made no investigation of the list?

A. We had lists of the bonds that were put up, and from time to time those securities were changed, and we required them to get permission from our court to make those exchanges.

Q. But you took the recommendation of the Security Trust Company as to those bonds, didn't you, without any investigation whatever, that is true, isn't it?

A. Nothing more than a general knowledge of the county.

Q. Took their word for it?

A. Yes.

Q. Why didn't you require the Security Trust Company of Austin to put up as security for your bonds the bonds which your county had legally issued and which you had sold to them?

A. We felt like we were protected by the assets of the bank. They had a good statement; they were personally investigated, and we felt like we were secured by the assets to begin with, and any bonds escrowed would just be additional security.

Q. Is it not a fact that the Security Trust Company bought these bonds from you in April, 1931, and defaulted on your checks in January, 1932, that that bank apparently was not in a solvent condition back in 1931?

A. No, sir.

Q. Don't you know as a matter of fact that a bank statement does not always reflect the true condition of the bank?

A. In addition to that bank statement we made other investigation. Our investigation led us to believe that the bank was sound. The assets they had were of such a nature and in such an amount, that we felt like it was entirely safe.

Q. You knew that the Security Trust Company did not have the cash on hand to pay you for those bonds, didn't you?

A. When we sold them?

Q. Yes.

A. No, sir, we did not.

Q. As a part of the agreement they required of you by contract that they pay the bonds out monthly?

A. No, sir, we did that. They didn't want to do it that way; they wanted to pay for them in a lump sum.

Q. Wouldn't you have gotten interest on the deposit?

A. Yes, but the interest would not have been as much as the accrued interest on the bonds.

Q. Couldn't you have taken that money out of there and bought good bonds that would have been safe, instead of taking Hidalgo County Water Improvement Bonds? You accepted Cameron County Irrigation District bonds, City of Donna, Hidalgo County bonds, and Willacy County bonds; you took those bonds as security. Of course some of them had been changed?

A. Yes, some were changed.

Q. You didn't want your own bonds as security, because of the fact that you thought you would be safe?

A. We would have rather had our own bonds than anybody's.

Q. If you had taken your own bonds as security there would have been no possible way in the world for the Highway Department or Concho County, or the taxpayers of your county to have lost a dime under this transaction, because of the fact you would have withdrawn and did withdraw a part of the purchase price of those bonds in cash?

A. These bonds were sold, as I understood, by the Security Trust Company, and we had no way of having them escrowed.

Q. The point I make is this, at the time you made the sale if your own bonds had been placed as security for your own deposits, today you would have had the bonds?

A. Surely.

Q. The Highway Department would have been protected?

A. Yes, sir.

Q. The taxpayers of your county would have been protected?

A. Yes, sir.

Q. And you would have had part of the Security Trust Company's cash in part payment of those bonds?

A. Yes, sir.

Q. Now, you say, Judge, that your county hasn't lost anything, no one has lost anything,—is that right?

A. We haven't lost anything today.

Q. Let me see now. Who paid for the work of this road construction in Concho County?

A. The Highway Commission.

Q. The Highway Commission?

A. Yes, sir.

Q. Where did they get the money?

A. From their funds.

Q. Who put those funds there?

A. It came out of the taxes.

Q. The taxpayers of Texas?

A. But on the other hand the taxpayers got the roads.

Q. Concho County has the road?

A. Yes, sir.

Q. The taxpayers of this State have paid for those roads?

A. Yes, sir.

Q. Now, the bonds you turned over to the Security Trust Company are outstanding?

A. Yes, sir.

Q. Who is going to pay for those bonds?

A. The county that issued those bonds.

Q. The State is going to pay for them under this bond assumption Act, or a part of them?

A. I presume so.

Q. Therefore, someone is going to pay double for those bonds or for that road. It is going to cost twice. It has already been paid for with funds of the Highway Department raised through gasoline taxes and registration fees, and so forth. Either the people of your county or someone is going to have to pay those bonds again?

A. I don't quite get your argument.

Q. The bonds are in the hands of some bond buyer, or some bond purchaser?

A. Yes, sir.

Q. And someone is going to have to pay for them?

A. Yes, sir.

Q. That is true, isn't it?

A. Yes, sir.

Q. But you have already used funds of the Highway Department to build those roads?

A. Yes, sir.

Q. Now, under the bond assumption Act the State of Texas will have to pay for those bonds again because the Security Trust Company has no money?

A. Yes, sir.

Q. And there is no way to get the money unless the bonds which have been placed there can be collected at some time in the future?

A. Yes, sir.

Q. That is correct, isn't it?

A. Yes, sir.

Q. The bonds which the Security

Trust Company placed as security for your deposit,—of course those bonds are now in possession of the trustee bank under the escrow agreement?

A. Yes, sir.

Q. That is correct, isn't it?

A. Yes, sir.

Q. Do you know the value of those bonds?

A. No, sir.

Q. No one knows the value of those bonds?

A. No, sir.

Q. As a matter of fact, most of those bonds in the Valley counties,—and those counties are defaulting?

A. I don't know.

Q. You don't know?

A. No, sir.

Q. As a matter of fact, some of the counties which issued those bonds are now making settlements with their creditors on the basis of ten cents on the dollar and issuing new bonds to pay on that basis.

A. I don't know.

Q. You don't know that?

A. No, sir.

Q. Of course, I sympathize with the counties in their unemployment situation, but if it is going to cost twice to carry on this employment problem it is rather expensive to the taxpayers of the State, isn't it, Judge?

A. I can't hardly get your argument, Senator.

Q. That is all, Judge.

The Chair: May I ask a question?

Senator Woodward: Yes, sir.

The Chair: The counties do not participate, under this refunding agreement, on these bonds that are up down here at the Security Trust Company?

A. What is that?

The Chair: The State does not pay those bonds that are down here?

A. No, sir.

Q. (Senator Woodward) The question asked you by Senator Redditt, as I understand, was to this effect,—that the county has issued bonds and those bonds have been sold, and your people are going to have to levy a tax to pay those bonds?

A. Yes, sir.

Q. And that the State Highway Department has already paid for the road. His question was, that would be a double payment?

A. Yes, sir.

Q. Now, that question assumed that you were not going to ever get anything out of your bonds, or get anything out of the Security Trust Company?

A. Yes, sir.

Q. Now, I will ask you, do you believe from the investigation you have made, the securities you have in addition to the securities that have been placed in escrow for the benefit of the Highway Department, together with the assets of the Security Trust Company, that Concho County will get its money back?

A. It will work out the situation in my judgment and I don't consider Concho County will lose a dime.

Q. (Senator Redditt) Let me ask one question. You admitted to me you didn't know the value today, or at the time you took those bonds as security for your deposit, the value of them?

A. The bond market right now is bad.

Q. That is true, but you admitted you didn't know the value of those bonds then, and you don't know the value of them now, do you, Judge?

A. I doubt if any man knows the actual value of bonds at the present time.

Q. And you don't know whether those bonds will ever be paid?

A. No, sir.

Q. If those bonds are paid in full, of course no one will lose anything?

A. No, sir.

Q. If they are not paid in full we will lose all of it?

A. There will be a loss.

Q. Have you ever filed a claim against one of these defunct banks, Judge?

A. That was a thing we didn't want to go through.

Q. Under the banking law of this State, you being a secured creditor of the Security Bank & Trust Company, or the Security Trust Company, whatever its name is, you have got to first look to your security, and then you will be a common creditor with the rest of the other claimants of that bank?

A. Yes, sir.

Q. Have you ever examined the records to see what the average percentage that these defunct banks pay out?

A. It is not very high, Senator,

but my investigation of their assets leads me to believe that given time and any return at all to normal conditions that the thing could be worked out one hundred cents on the dollar.

Q. How much dividends have they paid to date on this claim?

A. I couldn't say.

Q. Have they paid Concho County anything?

A. Yes, sir.

Q. I mean on the claim since the bank closed?

A. The bank has not closed.

Q. It is in process of liquidation, I understood.

A. I don't think so; they are doing business.

Q. Not closed then?

A. No, sir.

Q. You can't cash your checks down there at the bank?

A. We have been getting some of them through along.

Q. You think eventually you will get your money?

A. Yes, sir.

Q. You are an optimist, Judge.

A. I have to be, Senator.

Q. I agree with you.

The Chair: I will now recognize Senator Stone.

Q. (By Senator Stone) When did you start your negotiations with the Highway Department on this trade?

A. Which trade was that?

Q. Was this a county aid project out there between the county and the Highway Department?

A. Yes, sir.

Q. When did you start your negotiations with them as to how much you would pay?

A. We discussed the matter with them informally several times before the bonds were voted.

Q. Who did you have those discussions with?

A. Judge Ely, principally.

Q. Did you have any informal agreement with him before you had your bonds issued as to how much you would have to put up?

A. Yes, sir.

Q. And you agreed on two hundred and eighty-five thousand dollars for the county's part?

A. Two hundred and fifty thousand dollars for the county's part and the county to furnish the right-of-way.

Q. Two hundred and fifty thousand dollars for the county's part?

A. Yes, sir.

Q. Did you have any discussion with anyone besides Judge Ely on that?

A. I don't recall whether we did, or not. I was down here several times, I think. I think Mr. Martin and possibly Mr. Johnson.

Q. Did you discuss with him, before you issued the bonds, how the Highway Department would want their part of it taken care of?

A. No, sir.

Q. Did they make any inquiry from you in any manner as to how they would be secured in their part of it?

A. No, sir.

Q. When these bonds were issued and sold on the installment plan, did the Security Trust Company put up at the end of the sale a bond to cover the entire amount, or did they put up a bond each time?

A. Each time they got twenty-five thousand dollars worth of our bonds they put up twenty-five thousand dollars additional bonds with the trustee bank.

Q. How many of those installment payments did you have with them?

A. I think ten.

Q. Ten?

A. Yes, sir.

Q. Were any of those installment payments made after this conference in January, 1932, or all of them before?

A. All but two were made before.

Q. Do you remember the amount paid after that?

A. Fifty thousand.

Q. Fifty thousand dollars?

A. Yes, sir.

Q. Now, you actually had securities put up to cover fifty thousand dollars worth of your bonds after the conference in January, 1932?

A. No, we placed that money in another bank.

Q. Did you get the cash for that?

A. Yes, sir.

Q. How come you to get the cash on that and couldn't get in on the rest?

A. The man who bought the bonds paid us the cash.

Q. Then you had eight installments before that time, and you had eight different escrow agreements with the Security Trust Company?

A. No. Our original contract covered that, Senator.

Q. Did you check each time to see whether they put up the bonds?

A. Yes, sir. An order was issued by the commissioners court under the seal of the county to the trustee bank authorizing them to deliver twenty-five thousand dollars worth of our bonds to the Security Trust Company upon their giving them a deposit slip for the amount of money and depositing with them as trustee twenty-five thousand dollars worth of approved securities.

Q. Did the trustee have to come back to you folks each time and get your approval?

A. No, sir.

Q. Your approval of these securities?

A. No, sir.

Q. Then you really never made any check at any time of any securities being put up with the trustee?

A. Except as to amounts.

Q. As to amounts?

A. Yes, sir.

Q. Do you know whether or not the Highway Department ever made a check of those?

A. I do not know.

Q. Now, your agreement with the Highway Department,—did you make a contract with them after this bond issue as to how much you were going to give them?

A. Yes, sir.

Q. Was that a written contract, or verbal?

A. My recollection is it was a written contract.

Q. Do you know whether you have got a copy of it out there at home, or not?

A. It is on record, if it was made.

Q. It is on record?

A. Yes, sir.

Q. Will you send us a copy of that, please?

A. I am not sure,—there is so much of that. It is a little bit hard to recall offhand, but I think we have.

Q. And under that contract they were to get two hundred and fifty thousand dollars?

A. Yes, sir.

Q. When was the first time they made demand on you for any payment?

A. I can't recall. It was some time during the latter part of 1931.

Perhaps in November or December.

Q. November or December?

A. Yes, sir.

Q. Do you know how much the amount of that demand was?

A. We paid the Highway Commission seven thousand dollars approximately,—they would go ahead and let a contract for fifty thousand dollars—

Q. (Interrupting) Didn't they let the entire contract out, for the entire construction, in one contract?

A. Sir?

Q. Didn't they let one contract to cover the entire amount to be expended?

A. No, sir. These roads would be divided up into projects, say ten miles, and the engineers were to prepare their plans and bids were called for by the Highway Department, and that piece of construction was given a number, say F.A.P. 590-C. That covered that ten miles. For the purpose of illustration we will say the low bid on that was fifty thousand dollars. The State Highway Commission would advise us as to the amount of that bid and as to our part, which amounted to one-fourth. They would send us an escrow agreement in blank for us to fill out for twelve thousand five hundred dollars. We executed that agreement in triplicate with the bank. We signed it. It shows on the minutes of the commissioners court. Then the escrow agreement, escrowing funds for this particular project, was sent to the bank for execution, and upon execution twelve thousand dollars worth of securities were taken out of our general fund and—

Q. (Interrupting) You mean, taken out by the trustee?

A. By the trustee. At the end of the month the engineers would make their estimates. We will say on this particular road we are talking about four thousand dollars worth of work had been done. The Highway Commission billed us for one thousand dollars, giving us an itemized statement of the work already done. In turn we issued the State Highway Commission a check on the Security Trust Company for that amount, and we had paid, as I said, something like seven thousand dollars up to January, 1932.

Q. Well, now, how many escrow funds did you have up with the High-

way Department in January of 1932? How many projects had been let?

A. I think we had three. We have four now.

Q. You mean four in addition to those three?

A. No, sir, four altogether.

Q. And you had three escrow agreements with the Highway Department at that time?

A. Yes, sir.

Q. Now, who picked those securities?

A. They were taken out by the trustee bank.

Q. Did you exercise any discretion, or did the Highway Department exercise any discretion in the selection of those securities?

A. No, none at all.

Q. Then the practice of the Highway Department was that they were willing to take the trustee's word down here,—whatever he said was all right, suited them?

A. Yes, sir.

Q. And whatever they said suited you?

A. Senator, there was an agreement that there would be no substitutions except when authorized by the Highway Commission and by the commissioners court; in other words, if they had a bond down there and wanted to substitute another bond for that they couldn't do that without authority from the Commission or commissioners court.

Q. No substitution. What do you mean by that?

A. Well, suppose they had a bond of A county and wanted to take that out, and take a bond of B county as against it, they couldn't do it unless they were given permission.

Q. Then the Highway Department told you they wouldn't make this agreement out there unless you contributed your one-fourth part?

A. Yes, sir.

Q. And they entered into that on the assumption that you would pay one-fourth of those contracts.

A. Yes, sir.

Q. And that was represented to the people when they voted on the bonds?

A. Yes, sir.

Q. Then after making that representation, do you come up here and tell us that the Highway Department didn't follow that up and exercise any discretion whatever in what they were going to accept from you to guarantee them in the payment of

that two hundred fifty thousand dollars?

A. They had those bonds that we had up which was all the discretion they had in the matter.

Q. Did they ever make any inquiry from any of you as to whether those bonds were good or not?

A. Not from me.

Q. Do you know of any being made to any member of your court out there?

A. No, sir.

Senator Woodruff: I think that's all.

Questions by Senator Hornsby.

Q. I want to ask are you the same "Jim" called "Sunny Jim" when here yesterday?

A. Yes, sir.

Questions by Senator Hopkins.

Q. Judge Sims, in order that I may get it clearly fixed in my mind, I want to go back and ask you a little bit about what transpired at the meeting here in Austin in January 1932. At that time did Concho County have any outstanding checks which had not been honored?

A. I think so, Senator.

Q. Now, in the group meeting when the questions were discussed with Mr. Johnson and certified to the Attorney General for answer was there any discussion as to the possible liability of the county on the check in the hands of the Highway Department unhonored?

A. I am not sure, but I think there was.

Q. There was discussion?

A. I think so. Now, there was lots said down there.

Q. Was there promises or inferences made by any representatives of the State Highway Department that the checks would not be returned to the county and demand made for payment?

A. I don't recall any.

Q. In other words, as I understood Judge Gaines on yesterday he testified that he thought that there had been a legal liability and probably still was on the counties based on the unpaid checks in the hands of the State Highway Department. We might differ, but I want to ask whether or not any member of the Highway Commission or any representative of the Highway Commission made any promise to any county

that collection would not be demanded as against the county for unpaid checks.

A. I don't think they did.

Q. But the matter was discussed?

A. That's my recollection.

Q. What was your conclusion or the conclusion of the group with reference to the liability of the county?

A. My own conclusion was that the county was liable on those checks the same as I would be if I gave you one.

Q. Your conclusion was at that time that the county was liable?

A. Yes, sir.

Q. Then is it your opinion that the county is still liable?

A. Yes, I believe it is.

Q. Then do you have any sort of working agreement on behalf of Concho County that the State Highway Department will re-present the unpaid checks to the county and demand be made for payment?

A. No, sir.

Q. Do you anticipate any such demand from the Highway Department under the legal liability Concho County owes to it on those checks?

A. No, sir. I think this can all be worked out.

Q. It is your opinion that payment will ultimately be honored and that the checks won't be re-presented?

A. Yes, sir, honored by the bank.

Q. Your recollection is that no member of the Highway Commission or any representative made any promises of any sort to any of the group judges?

A. My recollection is no promises were made.

Mr. Hair: I believe it is conceded that I as the representative of the county judges may ask some questions.

Senator Holbrook: I find that we will have to consume more of the day and as the noon hour has arrived I suggest that we recess the meeting until two o'clock. I have no objection to Judge Hair interrogating witnesses, I assume it all right, but I think this Committee is going to have to be careful.

The Chair: I of course understand I have very little authority up here and can't run this like a court and have been indulgent, but it seems to me that there has been a whole lot of duplication here through some

Senator not paying attention to what other Senators are asking while interrogating witnesses and then interrogate the witness along the lines asked about and some questions have been asked twice. I think after this witness is through I will try to rearrange matters and hope it meets with your approval and that we will be able to proceed faster. We are taking too much time on these witnesses, too much duplication, and I believe it could be handled where the record would be clearer and where it would be less expensive as well as get along much faster, but for the present Judge Hair may interrogate the witness and let's conclude with him just as soon as we can.

Senator Redditt: I want to ask the Judge, when you return home, will you send back to the Committee the original list of securities placed with the Security Trust Company by your county as its depository, the depository for your county, also changes made from time to time, and also the present list of securities down there?

Senator Stone: I would like to find out when we get through with this witness if we will recess until later on in the afternoon or recess until Monday?

Senator Woodruff: Let me make this statement. It has been my purpose to move that the Committee recess until two o'clock Monday. The Senate convenes at ten o'clock on Monday and I am sure from ten o'clock to noon will be consumed with Senate matters and I am going to move to fix a definite hour for the Committee to meet again.

The Chair: I think I know the members of the Committee well enough to know they are going to adjourn to Monday.

Questions by Mr. Hair.

Q. I believe you stated you are now County Judge of Concho County?

A. Yes, sir.

Q. And were County Judge at the time your county selected the Security Trust Company as its depository?

A. Yes, sir.

Q. You stated that you made an investigation of the Security Trust Company at that time as to its responsibility?

A. Yes, sir.

Q. Who did you talk to in regard to its financial condition?

Senator Woodruff: Mr. Chairman, I am going to object to this line of interrogation for this reason: that the record shows conclusively whatever was done by the county judge in the selection of the depository was a matter in which the State Highway Commission had no concern and took no part in and we are going far afield from this investigation.

The Chair: I think so unquestionably.

Questions by Mr. Hair.

Q. Judge, you stated that after you had selected them as their depository you sent checks or warrants totalling forty-seven thousand dollars down to the Highway Department which were not cashed?

A. Yes, sir.

Q. By the Highway Department?

A. Yes, sir.

Q. You then said that you received a letter from the Highway Department in regard to that fact?

A. No, wait a minute, Judge. They had paid seven thousand dollars worth of our checks at that time.

Q. I understand, but there were approximately forty-seven thousand dollars worth that were unpaid?

A. No, since that time we have issued other checks which they are now holding.

Q. Now holding?

A. Yes, sir.

Q. But you received information from the Highway Department to come down, that your depository was in bad shape,—in substance to that effect?

A. They just called us for a conference.

Q. Well, wasn't the object of the conference to discuss with the county judges the inability of your depository of paying those checks?

A. It wasn't so stated in the letter; I did not know it until I got here.

Q. Well, when you got here that was it?

A. Yes, sir.

Senator Woodruff: I want to make a point of order that this line of interrogation is leading too far

afield and has no bearing on the matter here.

The Chair: So far it has been repetition but I thought he was leading up to something else.

Mr. Woodruff: I would like for the record to show whom he represents.

Senator Sanderford: He is a representative of myself and my county. My county is one of the few involved up there and will probably have to sustain a substantial loss and asked for counsel to which the Chair agreed.

Senator Woodruff: If the Judge here represents Bell County, Bell County has not come into question in this matter so far.

The Chair: I will overrule the point of order. Let's see how far this testimony will go and make up our minds what we are going to do about it.

Questions by Mr. Hair.

Q. The representation as to the condition of the depository to the various judges was given the various judges solely and alone by the Highway Department at the meeting on January 26th or 27th?

A. Yes, sir.

Q. Sir?

A. Yes, sir.

Q. Did they tell you that the bank was totally insolvent?

A. They did not.

Q. Did they tell you that if you insisted on your claim that you could get your money?

A. They told us that if we insisted on presenting those checks that it would probably throw the bank in liquidation.

Q. Then you had at that time your bonds up?

A. Yes, sir.

Q. And whatever the bonds didn't bring if the bank closed would be made up from the assets of the bank and stockholders' liability, and the personal liability of the stockholders to you and the directors of the bank if they knew that that bank was insolvent when they took your money?

A. Yes, sir.

Q. Did they tell you that?

A. I can't recall.

Q. What I am getting at is, you county judges relied solely and alone upon the representations of the Highway Commission as to whether or

not the respective counties could collect their money, or couldn't collect it,—in substance, isn't that what you relied on in that meeting?

A. That and some personal inquiries that we had made here in town.

Q. Now, did you make any inquiries as to the financial standing of the directors of the bank?

A. I don't recall as to the directors; we did go into the matter of the bank's assets.

Q. With the Highway Commission, didn't you, in that meeting?

A. No, sir, with the bank.

Q. With the bank?

A. Yes, sir.

Q. Did Mr. Cravens tell you?

A. Yes, sir.

Q. Tell you who the directors were?

A. No, sir.

Q. Was he present in the meeting with the Highway Department?

A. No, sir.

Q. The Highway Department did tell you they made an investigation, and that you all just had the bonds, and nothing else? Isn't that what was left on your mind; that you had to either take the bonds, or you wouldn't get anything except the bonds?

A. That was not the impression I got.

Q. You knew that your checks had not been cashed?

A. Certainly.

Q. And the Highway Department told you they had made an investigation and prepared an opinion before you got here and submitted it to the Attorney General?

A. Yes.

Q. That was not done at your instance, that first letter written by the Highway Department?

A. No, sir.

Q. The Highway Department did not even notify you all until they had met and discussed it and refused to cash the checks, and then made their own personal investigation, and reported to you county judges that that bank,—that you couldn't get your money, that the bank had defaulted?

A. Yes, sir.

Q. Have you since that time investigated the facts to find out whether the Highway Department misled you as to the condition of the bank?

Senator Woodward: I object to that question.

The Chair: The objection will be sustained, we cannot go into those matters. The Chair will not permit you to go into these things that go far afield. We are investigating the Highway Department, and not the county judges. Your right to question the witness will be stopped right now, unless you address yourself to matters that come within this investigation.

Mr. Hair: Will the Chair permit me to state why I am asking these questions?

Senator Woodward: I thought the gentleman was representing the commissioners.

Mr. Hair: I am.

Senator Woodward: Well, who is running this investigation, anyway. The Senate or some outsider.

Mr. Hair: Will the Chair permit me to state the purpose of the question?

The Chair: You may address your communication to Senators Martin, Woodruff and Woodward. You are going to drag this thing out to where we never will get through.

Mr. Hair: That is the only question I want to ask. Senator Woodward seems to think it is not material to the Highway Department, but I want to state where it is material.

The Chair: Well, go ahead and make the statement.

Mr. Hair: As I understand it, the inquiry here is not whether any law has been violated, but whether or not the Highway Department has acted in a manner that caused loss to the counties, and caused loss to the State of Texas. My question is addressed to whether or not the Highway Department represented to these county judges that they had made an investigation, and took it upon themselves to deal with the issues, the county issues, and with the State issues, and make misrepresentations to them as to the material facts.

In other words, they represented to them, as stated by this witness, that their bonds and their money would be lost.

The Chair: I don't think that the witness has so testified. I desire to state here and now, that from here on the questions will be asked by the Board of Managers, or by the Attorney General's Department, and then

we will request the Senators to ask questions in their order. We cannot bring out a lot of extraneous matters that will make this record bulky, and things that are entirely far afield.

Mr. Hair: Then will the Chair, while not permitting me to ask the questions, permit me to write the questions and let any Senator ask the questions instead of myself?

The Chair: Yes. But I think you are injecting things into this hearing that do not belong in it.

Senator Redditt: Mr. Chairman, and members of the Committee, I want to make this statement for the record. On yesterday when the chairman of this Committee named me as one of the members of the Board of Managers to succeed my good friend Senator Hopkins I accepted the appointment because of the fact that I believed, as a Senator of this State and a member of this Committee, it was my duty to do so. But I want the record to show that so far as I am concerned I am not prosecuting or defending any of these charges. If I had been here yesterday,—and the papers seemed to have something to say about it,—I would have voted to have permitted the State Highway Department, the State Auditor, the Attorney General's Department, and any county judge, or any other person or department involved to appear here and make any statement they want to. I, for one, think this is a lot of waste of time; I don't see any use in going into it; but in view of the fact that the message of the Governor has been received, in my opinion it is up to the Senate to do whatever they want to. It was not, as I see it, any charge on the part of the Governor of the State of Texas that any statement was true. It was a message from the Governor to the Texas Senate, and it was within the right and province of the Senate to do whatever it wanted to do with that message. I think we are taking up a lot of time, wasting a lot of money in going into a matter which will accomplish nothing when we get through with it. I am not lining up with anybody, except it be with my conscience and the taxpayers of this State. I want it strictly understood that I am appearing as a member of this Board of Managers of this investigation in my official capacity,

as one Senator. I want to say to the State Highway Department,—and I might add that I have some intimate friends over there,—I have had lots of dealings with the Highway Department; I have gone to them for lots of things. I have had dealings with the Attorney General. In going into this investigation I do not take it that any of the charges are true and correct until I have heard the evidence. I know of no wrong in the Highway Department, the Attorney General's Department, the State Auditor, or anybody else concerned with this affair. And I have no ill to say of any person or department or anyone else involved in this hearing, and I will be glad, as a member of the Board of Managers to bring out any evidence they want to present to me, either in behalf of the charges or in defense of the charges; and there is no partisanship, so far as I am concerned. I do feel that, in view of the fact that some of the members of the Senate insisted we go into this hearing, that it should permit any person or department involved to come into this meeting and present any evidence they want to in behalf of the charges, or on the message of the Governor.

The Chair: I concur in what Senator Redditt has said. Here is what you have gotten into; this witness has been carried over this same ground not less than four times since he has been on the stand. One Senator will sit and think about something else, or dictate his letters, or read the paper, while the witness is being carried over a matter, then he will turn around and ask the very same questions that have been gone over four or five times. You would not permit that thing in the court house, and we won't permit that disorderly procedure in this Committee. Now, everyone should be represented here, and we have four Senators in whom I have a lot of confidence to conduct this trial, and the interrogation of the witnesses must be left to these Senators, and not by outsiders. Every Senator will be given an opportunity to cross-examine the witness, even if he does repeat some of it four or five times.

Senator Redditt: I would like to make this suggestion, that between now and Monday the Board of Managers and the chairman get together

and formulate some plans of procedure.

The Chair: I think that is a good idea.

Senator Redditt: I would like to make this suggestion; if anybody will write out any question they want me to ask for them I will ask them.

Senator Martin: I want to make this statement in behalf of Mr. Hair; quite a number of questions were asked here yesterday undertaking to heave this loss that has been sustained on to the county judges and commissioners courts. That this morning there have been quite a few instances where it was suggested that the Highway Department was responsible for what the county judges may or may not have done, or what the commissioners courts may or may not have done? I don't feel like it is right for any department of this government here in this investigation, or at any other place, to heave all of the blame for whatever may have happened over on some other department, and then have us to sit here as a State Senate and say the other department cannot speak in person, but through counsel.

Senator Woodward: Let me make this statement for myself. I want the record to show as one of the members of the Senate I am not trying to lay any blame on the commissioners, and if they did the right thing I am for them.

Senator Pace: I make a motion we recess this hearing until 2 p. m. next Monday.

The Chair: Are there any further questions?

Senator Martin: In the interest of time if the Highway Department, if they have any of these contracts we asked for yesterday, if they will deliver them to the Secretary of the Senate I will have access to them between now and then, and that will be quite an advantage.

The Chair: The reporter will please deliver a copy of that request from Senator Martin to the Secretary of the Senate, and the Secretary will transmit it to the Highway Department, and have the matter available Monday morning.

Senator Martin: Have it available this afternoon. If it is not available this afternoon have it here Monday morning.

(Whereupon the hearing was adjourned until 2 o'clock p. m., Monday, February 20th, 1933.)

TWENTY-SIXTH DAY.

Senate Chamber,
Austin, Texas,
February 20, 1933.

The Senate met at 10 o'clock a. m., pursuant to adjournment, and was called to order by Lieutenant Governor Edgar E. Witt.

The roll was called, a quorum being present, the following Senators answering to their names:

Beck.	Oneal.
Blackert.	Pace.
Collie.	Parr.
Cousins.	Patton.
DeBerry.	Poage.
Duggan.	Purl.
Fellbaum.	Rawlings.
Holbrook.	Redditt.
Hopkins.	Regan.
Hornsby.	Russek.
Martin.	Sanderford.
Moore.	Small.
Murphy.	Stone.
Neal.	Woodruff.

Absent—Excused.

Greer.	Woodward.
Woodul.	

Prayer by the Chaplain.

Pending the reading of the Journal of yesterday, the same was dispensed with on motion of Senator Stone.

Petitions and Memorials.

(See Appendix.)

Committee Reports.

(See Appendix.)

Bills and Resolutions.

By Senator Hopkins:

S. J. R. No. 15, A joint resolution Proposing an amendment to Article XI of the Constitution of the State of Texas by adopting a new section, to be known as Section 11, and which shall provide that counties, cities and towns may by a majority vote of the qualified voters thereof, at an election held for that purpose, adopt public debt limits in lieu of the ad valorem tax rate limits now prescribed for such subdivisions; providing that the public debt limits